

Appendix C: Meeting Notes

1. October 21, 2002
2. November 25, 2002
3. December 9, 2002
4. December 15, 2002 (Affordable Housing Working Group)
5. January 14, 2003
6. February 3, 2003 (Legislative Agenda Working Group)

**Community Preservation Advisory Committee
October 21, 2002
9:30 – 12:30, State House Room 437
Meeting Summary**

Attending:

Sen. Peter Mills (Chair), Skowhegan, Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. Sue Hawes, Standish
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant
and former Realtor
Peter Judkins, Maine State Housing Authority
(Board) and Franklin Savings Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque Isle
Beth Della Valle, State Planning Office
Kirk Mohney, Maine Historic Preservation
Commission

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal
Analysis (committee staff)
Rep. Scott Cowger
Mike Johnson, MHPC
Jim Rier, Maine State Board of Education
Kathy Fuller, Maine Department of
Transportation
Peggy Schaffer, Department of Economic and
Community Development
Peter Merrill, Maine State Housing Authority
Jerry Nault, Bureau of General Services
Kirsten Hebert, Maine Municipal Association
Deb Burns, Maine Audubon
Linda Gifford, Maine Association of Realtors
Bill Ferdinand, Eaton Peabody
Fred Landa, SPO

Absent Committee Members:

Sen. Lynn Bromley
David Holt, Town of Norway

Welcome & Introductions

- Sen. Mills welcomed committee members and additional participants to the meeting and reviewed the reasons why the Committee was mandated and the spirit under which he hopes it will function.
- Members of the Committee introduced themselves, provided some information on their background and biases related to the Committee's mandated topic areas.
- Liz Rettenmaier and Susan Johannesman introduced themselves and briefly described their roles in staffing the committee. Liz is available as the primary committee staffer; she will provide organization and meeting planning assistance, coordinate reimbursements, and liaise with other agencies and members. Susan is available to draft legislative proposals based on the recommendations of the Committee. Committee information and handouts (when available) will be maintained on SPO's website: <http://www.state.me.us/spo/cpip/cpac/cpac.htm>

Brief History of "Smart Growth" in Maine & Past Task Forces

- Beth Della Valle: Provided a brief overview of Summary of Legislative Activities draft *<handout>* provided at meeting, emphasizing that the Summary does not include some significant activities in the area by the EcoEco Group and other non-governmental efforts, nor the work of the Smart Growth Coordinating Committee and the Smart Growth Competitive Advantage/Three-Year Action Plan.
- Rep. Scott Cowger: Expressed support from the House Chair of the Natural Resources Committee. Reviewed several accomplishments to date by past legislative task forces, which included "baby steps" in several important areas. Rep. Cowger encouraged the Committee to engage State Economist Laurie LaChance in the discussion of tax policies and impact on growth and land use. Rep. Koffman added that the Natural Resources Committee has an important role in watching and guiding revisions and changes suggested by CPAC, as they are likely to be the implementing Committee.

The Current Context

- Peggy Schaffer, Department of Economic and Community Development: DECD includes three divisions, covering the areas of Business Development, Tourism, and Community Development (administering the Community Development Block Grant (CDBG) program). Ms. Schaffer noted that the CDBG program is one of the State's largest sources of funds for municipal grants; the funding is passed through from the federal government. CDBG funds approximately \$17 million in grants, although the use of those funds is limited by federal guidelines and priorities. For example, at least 51% of the benefit has to go to "low and moderate income" people, or to "relieve slum and blight." Even with those restrictions, however, DECD has found ways to encourage good planning in conjunction with the funding program. For example, DECD only funds projects within a locally designated growth area (or similar areas described in the rules), in towns with a local comprehensive plan (or towns that have not received a grant for a comprehensive planning effort).

While there has been some encouragement of regionalism, it is a difficult fit for the CDBG program because of its focus on paying for *local* infrastructure, such as sewer and water. The program was really designed for large urban areas, so DECD has worked to find a good fit for Maine towns. Approximately \$1.4 million of the CDBG funds are used for downtown grants.

DECD also administers the Municipal Investment Trust Fund (MITF), which Ms. Schaffer characterized as similar to the CDBG grants, but without the federal strings. The MITF was developed in 1993, although no funding was available to it until the summer of 2001. Currently, the Fund has \$4.3 million available from two bond packages. DECD is currently developing rules for the Fund. Working closely with the Maine Bond Bank, DECD foresees that it will be able to double the amount of funds available to municipalities by offering low-interest loans instead of concentrating on grant funding.

Currently only five cities in Maine, all in Aroostook County, are qualified to receive grants from the MITF because they have Certified Growth Management Programs. DECD is considering proposing legislation to remove the grant program, in order to focus on establishing a revolving loan fund that would benefit a larger number of communities and not draw down the Fund as quickly.

In addition, DECD is working closely with the Department of Human Services (Drinking Water Program), the Department of Environmental Protection, and the federal Rural Development program when new projects are proposed to maximize the funding matching opportunities and ensure the "biggest bang" for the local buck.

- Jim Rier, State Board of Education: Mr. Rier provided the Committee with a summary of Recent Accomplishments that Support Effective Growth Planning <handout>. The state's Renovation Fund of \$100 million has impacted over 100 school units, involving nearly 150 school buildings. The Department of Education (DOE) received applications from 375 – 400 projects, although not every application represented a single school. Renovation projects have, until this point, focused on health and safety issues, although Mr. Rier expressed the hope that upgrades and focusing on quality "learning space" will soon play a larger role in the funding. In two rounds of funding, the Renovation Fund has funded 35 schools; the capital value of the projects is approximately \$375 million (that is not the same as the cost of the projects to DOE).

Particular concerns of the Department include the rapidly changing school-age population. School enrollment projects released the day before the CPAC meeting showed that in 500 municipalities, 412 expect declining enrollments, some with declines as much as 20 – 40 percent. There is a lively discussion of whether or not building (or renovating) high schools for a small number of students (e.g., less than 300) is a good use of funding. The Department also recognizes, however, the difference between elementary, middle, and high schools in this discussion.

Mr. Rier was asked if there have been any changes to the rules regarding campus size of schools, which can make siting a school in already developed areas very difficult. He responded that the rules had not changed to reduce the minimum campus size, although the Department will allow exemptions for noncontiguous sites to count (e.g., off-site playing fields).

Mr. Rier was asked about the opportunity for changing the scoring of projects to reflect the proximity of excess capacity in close proximity to the proposed project. He responded that the scoring is based on the needs of the students and that the solutions proposed do not play a role in the prioritization of projects.

In response to a question about greater integration of school siting and planning with broader community development activities, Mr. Rier noted that districts and communities have frequently begun their project planning prematurely, before the Department has had an opportunity to lay the groundwork for the process. There has been some success in increasing community involvement and getting the State Planning Office involved early in the process, however communities generally begin to move ahead as soon as their names appear on the renovation list.

Mr. Rier noted that incentives for regionalism would work toward addressing issues of the large number of school boards and superintendents in the current system.

- Kathy Fuller, Department of Transportation: Ms. Fuller highlighted the Department's Access Management Program <handouts>. The program, although on the books since the 1950s, really started in 1999. New rules were released in 2002, which include greater focus on planning, corridors, and a regional approach to planning. The Department is currently collecting information in an inventory to examine the impacts of the new rules.

One aspect of corridor planning the Department is investigating is the opportunity for conservation of significant resources adjacent to corridors. For example, MDOT could purchase the access rights, while another agency or group could purchase the development rights.

Two emerging programs at MDOT were described. The Department is looking at integrating transportation planning with Urban, Service Center, and Village policy and investments. The current BTIP will identify these investments, while the next Six Year Plan will begin to integrate these areas. On a related topic, MDOT is also investigating the use of state-funded transportation block grants for transit incentives, building out of last year's legislative session allowing Local Road funds to be channeled into transit incentives. The Department is also interested in introducing rules or guidance for the transportation elements of a comprehensive plan. The Planning and Land Use Regulation Act does not incorporate recent changes to state law, including the Sensible Transportation Policy Act of 1991.

When asked about linking density and land use planning to transportation investments, Ms. Fuller responded that the Department is starting to do this in some areas. For example, MDOT has a new sidewalk policy where they will pay for sidewalks in dense neighborhoods with appropriate setbacks, proximity to schools, and other features.

- Peter Merrill, Maine State Housing Authority: Working through a series of *handouts*, Mr. Merrill noted the forces of supply and demand of affordable housing units are not balanced at the local level. It is in a town's best interest to limit the supply of additional housing units because of the additional costs involved, and some towns are actively discouraging residential development through growth caps, zoning, and cumbersome local approval processes. This is impacting growth because homebuyers are being pushed out because they cannot afford in town and pulled out because property taxes are so much lower outside of the cities. The tax policy discussion is a good opportunity to get at school funding and tax policy's impacts on affordable housing issues.

Sen. Mills inquired whether the mill rate maps in the handouts were based on the “true value” mill rates available on the State Treasurer’s website. Mr. Merrill will investigate and report back to the Committee.

- Jerry Nault, Bureau of General Services: Mr. Nault shared information developed for the recent Downtown Conference, including a list of selected leased spaces in service center downtowns and growth areas. <handouts> The Bureau provides a monthly report to the Governor that includes new leases. Rep. Koffman asked if it included variables such as where the space was located (in a service center, growth area, downtown), and if it is taxable.
- Beth Della Valle, State Planning Office: Reviewing an open letter to the Committee <handout>, Ms. Della Valle highlighted significant accomplishments by the past growth management Task Forces, and encouraged the Committee to consider the linkages between patterns of development and tax policies, smart growth and affordable housing, and options for inducing growth and redevelopment in service centers and downtowns in the short-term.

Discussion of Priorities for Committee

- Summary of Survey Results: Tallies of the responses to the survey were provided, sorted by number of responses to the short- and long-term priorities. <handout>
- Discuss and Set Priorities: The conversation was opened by soliciting areas that were left over or “left on the cutting room floor” from previous Legislative sessions or task forces. The following areas were mentioned and will be discussed further at the second CPAC meeting:

Livable, Affordable Housing: The Committee is interested in additional background on this subject: What is the history of this bill, which failed last session? What did it contain? What were/are the politics contained around it? Finally, Peggy Schaffer will look into why real estate tax increment financing (TIF) programs cannot be used for affordable housing projects?

Tax Policy: The time is ripe on this issue, and the opportunity exists to identify the “carrots” that a revised tax policy can offer to encourage “smart” development. Tony Neves and Mike Allen of the Maine Revenue Service, and Laurie LaChance, the State Economist, may be good resources to draw on for this topic, as well as Sen. Mills, Rep. Koffman, and Rep. McLaughlin.

Obstacles to Infill Development: NIMBYism (not in my backyard) and retroactive moratoria lead to uncertainty that negatively impacts local development. Individual towns can block regional planning efforts. The growth cap bill passed last session does not contain any criteria or standards. There are no *regional* growth areas, or coordination of where growth areas should be across town borders. The Committee would like to discuss legislative options to address these concerns. In addition, Jerry Nault, BGS, will follow up to see what information about state-leased and owned facilities is tracked, including location (in a service center, downtown, growth area), and whether or not the facility/property is taxable.

Transfer of Development Rights: TDRs are allowed, but not encouraged or facilitated. Land for Maine’s Future could be authorized to undertake this effort. In the short-term, the Committee is interested in identifying ways to actually administer a statewide TDR program. Additional information about TDRs and how towns, regions, and states have implemented programs was requested.

Integrating Transportation: If MDOT needs legislative action to integrate transportation into the comprehensive planning rule, the Committee will consider it. The Committee is interested in investigating options for state support of mass transit and service roads as an alternative to highways. MDOT was requested to bring more information about these proposals to the next meeting.

Statewide Rehabilitation Code: The Attorney General's Office is offering legislation next session on contractor licensing. The Committee is interested in furthering its understanding this issue, including what happened last session and how they might move beyond that.

Next Steps

- 2nd Meeting scheduled for November 12th, 9 am – 2 pm, State House Room 437
- 3rd Meeting scheduled for November 25th, 9 am – 2 pm, State House Room 437

**Community Preservation Advisory Committee
November 25, 2002
9:00 – 2:00, State House Room 437
Meeting Summary**

Attending:

Sen. Peter Mills (Chair), Skowhegan, Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant
and former Realtor
Peter Judkins, Maine State Housing Authority
(Board) and Franklin Savings Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque Isle
David Holt, Town Manager, Town of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Presenters to Committee:

Mary Ann Hayes, SPO – Taxation Policy (287-
1009; maryann.hayes@state.me.us)
Dave Ledew, MRS – Taxation Policy (287-4787;
david.p.ledew@state.me.us)

Presenters to Committee (continued):

Adam Krea, Treasurers Office – Taxation Policy
(624-7479; adam.krea@state.me.us)
Kathy Fuller, MDOT – Transportation (624-3300;
kathy.fuller@state.me.us)
Peter Merrill, MSHA – Affordable Housing (626-
4608; pmerrill@mainehousing.org)
Mike Finnegan, MSHA – Affordable Housing
(626-4600)
Alan Bringham, DECD – Housing and TIFs (624-
9800; alan.brigham@state.me.us)
Beth Della Valle, SPO – Growth Caps, TDRs
(287-2851; beth.dellavalle@state.me.us)
Bruce Hensler, SPO – Building and Rehab Code
(287-5649; bruce.hensler@state.me.us)

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal
Analysis (committee staff)
Kristi Carlow, Treasurers Office
Sylvia Most, Town of Scarborough
Chris Hall, Maine Chamber of Commerce
Julie Jones, Office of Fiscal and Program
Review
Kirsten Hebert, Maine Municipal Association
Tim Glidden, State Planning Office
Frank Miles, Maine Farmland Trust

Welcome & Introductions

Rep. Koffman welcomed committee members and additional participants to the meeting and reviewed the agenda for the day's meeting. Members of the Committee and other attendees introduced themselves. Liz Rettenmaier and Susan Johannesman introduced themselves and briefly described their roles in staffing the committee.

Tax Policy

Mary Ann Hayes of the State Planning Office introduced the tax policy discussion, outlining the primary challenge to the Committee: determining the appropriate angle on the tax policy discussion for the Community Preservation Advisory Committee within the context of the current number of tax policy reform discussions and proposals.

Dave Ledew of the Property Tax Division of the Maine Revenue Service (MRS) began with the state equalization process, and how money goes in and out of the state's coffers:

New assessors are given about 15 hours of training, which will be summarized today in about 15 minutes. Property tax is basically a local tax that provides revenue for local services. Unlike income and sales taxes, a municipality knows how much is going to be earned each year through the property tax – it is not dependent on the economy. Municipalities set the property tax rate to ensure that they raise the money that they need to fund their programs / budgeted costs.

Tax assessors neither raise nor appropriate taxes – annual town meetings and town councils determine the property tax burden through the in the budgeting process. The assessor distributes the tax burden determined by the town in a “fair and equitable” manner, as required by the state constitution. Assessors need to establish value on each piece of property with the same ratio to market price, this doesn’t necessarily need to *equal* market price. For example, if residential property taxes are set at 80 percent of market value, every property needs to be assessed at 80 percent of fair market value.

The trend we are seeing is one of larger local dependence on property tax as a means for raising funds. Through the 1990s, the state had relatively flat property tax increases, and relatively flat valuation increases. In 1999, the current real estate market really started to take off, possibly due to investors funneling money out of the stock market and into real estate. The state began seeing big changes in selling prices and volume for sale, especially in southern Maine. This was especially noticeable in higher end properties perceived as investments (e.g., waterfront properties – not just ocean, but also lakes).

As a result, the MRS is seeing an increase in local valuation. Valuations were stable through the 1990s (seeing 2 to 4 percent increases). In the last couple years, valuations have been rising by 5, 8, or 11 percent statewide, particularly in waterfront properties.

Local assessors are forced to look at this through the “fair and equitable” lens. Without an increase in overall taxes, the burden would shift toward the increasingly expensive waterfront properties. But, since local expenditures (and therefore taxes) are going up overall, everybody is feeling it.

HANDOUT – 489 municipalities (towns, cities, and plantations), plus 12 unorganized territories (broken into regions by counties)

- *Question:* Is there any way of tracking increases in property values to income by locality?
 - *Response:* Can probably do it from Census numbers.

HANDOUT – What happens when values go up? If there is not increased local spending, tax rates will go down to have about the same amount of taxes per person.

HANDOUT – Tree Growth Primer. This exercise points out that any change in valuation scheme that gives one class of property owner a break will result in a shift to other property tax owners. In the state, we have 11 million acres in the tree growth program. The reality is, though, this type of program can have a significant local impact when the tax burden is shifted to other local taxpayers. The Legislature recognized this was an erosion of the tax base and put forth a reimbursement program to alleviate the burden on other taxpayers – the tree growth reimbursement formula is based on countrywide averages of undeveloped acreage value (usually higher than tree growth) to compute theoretical tax loss, reduced state valuation.

Adam Krea of the Treasurers Office presented a memo from State Treasurer Dale McCormick, which included the two Revenue Sharing (RS) funding formulas. Revenue Sharing I is intended to redistribute broad based taxes; it distributes funding to 493 entities (municipalities, unorganized territories, Indian townships, plus two Indian reservations). The population in the funding formulas are based on the Census and adjusted every year. The values in the formulas are not held static for the same year; the most recent of each of the numbers available is used (e.g., now using the 2000 population numbers, the 2001 tax assessment number, and the 2002 certified state valuation). RS I spits out a number, which is converted to a percentage of the total, and that is used throughout state formula. On the 20th of the month, the State will distribute 5.1 percent of the previous month’s revenues (personal income, property, and sales tax from state revenues) into the local government fund. This information (the amount of distributions, percentages, etc.) is posted on the Treasurer’s website: <http://www.state.me.us/treasurer/revenue.htm>.

Revenue Sharing II started in FY 2001. The purpose is a little more surgical than RS I: to provide a little more to 90 or so service center communities in the state. The formula decreases the property tax burden

by .01 before multiplying by the population. By September 1st of any given fiscal year, a ceiling is calculated for RS I – after that RS II kicks in. In bad years, distributions will not even reach the ceiling, so no RSII funds will be distributed.

HANDOUT – RS comparison – if you had the same amt of money to distribute with RS I vs. RS II, this describes how the distribution changes. Right now, this is purely theoretical, this is if the system was changed to just be RS I or RS II, which is not the case.

Dave Ledew of the MRS returned to briefly describe three state tax relief programs.

- The Homestead Exemption has an easy application process; the municipal assessor can give an exemption of up to \$7000 (if assessed at 100 percent of market value – the exemption is adjusted accordingly if the assessment is less than 100 percent of the fair market value) from the value of the property
 - In the last year or two, a lot of municipalities are taking greater pains to adjust their valuation base to be up above 90% so they can maximize the homestead exemptions possible.
 - Rural municipalities do valuations about every 10 years; more urban communities are updating their valuations more frequently so residents can take advantage of the homestead exemption.
 - The program started in 1998.
- The Circuit Breaker program has changed over the years; it establishes a household income threshold in order to qualify for a direct payment from the state if the property tax bill exceeds 4 percent of the income. The Circuit Breaker program has been in play in some shape or form since the 1970s.
 - Costs about \$22 million or \$23 million annually.
 - The income threshold was much higher in the 80s with a higher cap (now it's \$1000 per payment).
- While the Elderly Deferred Program is on the books, it has been closed for applications since 1990. There are still about 25 homeowners in the program. The program was put in place in 1989. For homeowners 65 or older, with incomes less than \$32,000, the state would pay property tax bills. The program began with 150 enrolled in the program. It was conceived as a rotating / self sustaining program after about 10 years. However, it only really operated for a year.

HANDOUT – *Mary Ann Hayes* of the State Planning Office provided a handout outlining how tax policies may influence locational decisions, how spending policies influence locational decisions, and some paths the CPAC might consider moving forward.

Committee Discussion:

- Peter Mills: I am most interested in better using what tools we currently have.
- Ed Suslovic: A recent Brookings Institution survey ranked Maine high on sprawl; sprawl was generally attributed it to over reliance on property tax and fragmented localities
- Peter Mills: There are a few things on the agenda already:
 - School funding distribution. There is talk of changing current system, which average 2nd and 3rd years back of property values, to take average of more than just two years of valuation in order to provide more of a buffer over time to more rapid changes in valuation (e.g., 4).
 - Local options – e.g., local option sales tax, meals and lodging

- Expanding the circuit breaker to higher income cutoffs and higher reimbursement levels – sometimes coupled with repealing the homestead exemption as a way to fund that.
- Beefing up RS II, which is a more desirable way of distributing state dollars into high mil-rate communities
- Janet McLaughlin: The possible CPAC areas of tax reform recommendations (in Mary Ann Hayes' handout) are a good place to start.
- Peter Mills: We are heading into affordable housing, and can come back to specifics in the afternoon. One of the burdens we have is whether or not there is specific legislation we want to get behind in the short term.
- Ted Koffman: Here are some of the other thoughts:
 - Bring back the working waterfronts constitutional amendment;
 - Consider land banking, Doing more for farm preservation – e.g., the dairy industry;
 - Institute a capital gains tax on speculative lands sales / liquidation forestry – modeled after Vermont's tax;
 - *HANDOUT* – Muskie paper on tax policies;
 - Alter gas tax spending to allow investment in transit (operating funds);
 - Investigate how the tax system could create more exportability – distributing burden of property tax to those that are not here year-round? (e.g., differential tax on second homes).

Livable, Affordable Housing

Peter Merrill of the Maine State Housing Authority put the housing concerns of the state in context. Maine is facing more and more problems with affordable housing. One of southern Maine's MSA's is the 10th most unaffordable in the country – behind 9 in California.

The lack of a variety of housing types and prices leads to the disenfranchisement of trade and labor groups key to communities from entry into homeownership. This is especially a problem in the southern third of Maine and the coastal corridor.

HANDOUT – The livable, affordable housing bill introduced last year aimed to: create a standard for great American neighborhood, create a board that can pre-certify a design submitted for development, if approved, and limit community requirements for affordable housing so that it cannot require higher standards (in frontage, density). It would not apply where there is not a problem (as distinguished by labor market areas).

The definitions in the proposed bill included “affordable neighborhood development” – more middle-class than what is generally understood as “affordable”, addressed requirements for sewer and water, and included definitions of common and internal open space.

The law would have created a state review board of 8 members. The board would review a development's plan and either accept it as a “precertified affordable neighborhood development” or reject it with an explanation. The proposed bill included design guidelines, directing the review board to adopt rules based on basic principles (walkable, choice of housing, different incomes, space, landscaping, environment, ongoing affordability)

When the bill was debated, the issue was local control vs. central planning. The Maine Municipal Association was strongly against the bill; it never got to the Senate. The bill was reviewed by the Natural Resources and Business and Economic Development committees and voted “ought to pass” (although the vote was not unanimous). An impressive coalition supported the bill – including religious groups, women's' groups, environmental organizations – which was counterbalanced by MMA.

Committee and Audience Discussion:

- David Tobin: This is a great bill that ought to be restricted just to service centers. In Windham, we are getting ready to do a development that is denser than is proposed in this bill. It would be vetoed in a heartbeat if this had to be vetted by Augusta.
- Kirsten Hebert (MMA): The new policy committee will be seated in January, historically, though MMA constituents were not at all fond of having a centralized board that would leapfrog local authority. We have been using the templates and model ordinances from SPO for years, and would be more than willing to revisit those first, and to assist municipalities in implementing this approach. One of the primary concerns was removing local control over siting development and addressing the impact on transportation, safety, schools, and other local infrastructure.
- Peter Merrill: This bill would have impacted nine out of the thirty-five labor markets in the state; it would not be a burden on communities where this is not already a significant problem.
- Ted Koffman: In the activities of the community group MDI Tomorrow, affordable housing is a huge piece. Did municipal officials start this organization? No – it was started by businesses. Why haven't municipal leaders really come to this issue energetically?
- Kirsten Hebert: A regional approach is being addressed without this law. Communities in southern Maine are beginning to think about growth and higher density (e.g., putting density in one municipality and preserving open space in another). People are looking to the MMA legal staff for options to increase density. Nat Tupper is the contact for information on the group of eight southern Maine towns looking at issues regionally.
- Ed Suslovic: The City of Portland's City Council voted to support this bill, so at least one municipality supports it. Would this bill mean that a municipality couldn't stop a project – certainly not. Subdivision review is still required and if a community wanted to kill it, they could. In addition, he is not aware of any municipality other than Portland that allows more dense development than zoning permits, despite what comprehensive plans say. One additional thing we need to address is local requirements for roadways – that has a major impact on affordability.
- David Holt: In our town, we would certainly be opposed to the state telling us how to site things. Community members are still upset about the state rejecting the comprehensive plan for our clustering proposal.
- Sylvia Most (Town of Scarborough Counselor): We are facing some of this with the Dunston Corner proposal; we are especially concerned with the issues of transportation.
- Ed Suslovic: However, without any affordability guidelines, a Dunston Corners type of development will not ultimately be affordable despite the density and smaller size – because of pent up market demand for this type of housing (e.g., Dunston Corners has no affordability component).
- Jeff Sosnaud: The density issue will affect sprawl and the cost of delivering services, impacting affordability... Can you connect the dots between density and affordability?
- Peter Merrill: The proposed bill had affordability requirements; the increased density makes it economically viable for the developer.
- Beth Della Valle: There is pent up demand for this type of community (the "Great American Neighborhood"). Thirty-eight percent of those surveyed in an SPO study said they would purchase this type of home if they could find one – but this type of housing has not been built since the 1960s. Where there is this type of housing, you're seeing increasing values because of steady and increased demand. Other states and localities have addressed this issue. In Massachusetts, if a municipality's local ordinances prevent low and moderate income housing from being built, the state can override. In Montgomery County, Maryland, every subdivision over 50 units has to have 25% priced at low- and moderate-income levels. These units are so well integrated that unless you knew what you were looking for, you wouldn't pick those units out, preserving the value / profit for the developer for the "regular" unit. Market forces will conspire to make those upper end / not affordable unless there is some regulation / rule in place.
- Mike Finnegan: When the Dunston Corner project came up, I was concerned about the lack of affordability in it. Although the proposal does not meet the MSHA affordable housing guidelines, some of the lower priced units are just above them, which is a great addition to the housing stock in that neighborhood. The road to an unaffordable housing hell is paved with good intentions and long discussions. I think we are going to get to a constructive intersection with MMA. I think as

more communities recognize the need for affordable housing and address the problem locally, we will not need a bill like this – but we're not currently seeing this happen, which is leading to a crisis of affordability.

- Peter Mills: No municipality acting on its own is going to invite this type of development because of the increased school costs, without a corresponding big increase in property valuation and taxes collected. Who would want this type of development?
- Mike Finnegan: It has been demonstrated for every 1000 new jobs, you need 700 new housing units. If you want to grow from an economic development perspective, the workers need to live somewhere.
- Peter Mills: It's a little bit like shoreland zoning, it's not going to happen locally unless you change something big.
- Ed Suslovic: The reason why the Dunston Corners project, which includes 450 units of housing, commercial, and open space on 150 acres, does not include affordable housing is that the developers were told by some City Counselors: "if you include affordable housing (by MSHA / federal standards), it will be over my dead body." Voluntarily, municipalities are not going to address the affordable problem. When speaking regionally, everybody agrees the link between affordable housing and economic development is critical – and the affordable housing can all go in the next town over to support the commercial in our town. We're dreaming if we think a bill like this will suddenly result in these things being built – towns that want to stop it will, but this sets the tone, provides a model.
- David Holt: I have worked with towns for 26 years; most towns I have worked with actively pursued the development of low-income housing. The difference in geography between southern and northern Maine is significant, but I don't encourage you to assume that local officials don't care about low-income families. I'm not sure if some southern Maine communities want *any* growth – low income or high income. The difference in cost between rehab and new building (infill) are an issue to be addressed.
- Sylvia Most: There are at least two Counselors that would have been more in favor of the Dunston Corners project if there were an affordable housing component. This project is not facing local political pressure on the face of the financial picture (which is positive for the town), but on the risk associated with the project – will the state fund the transportation changes it promises; if more kids show up than were originally planned for, who will pay for that? Right now, the risk almost entirely falls to the municipalities, and almost all the municipalities cannot face that.
- David Tobin: Maybe Windham is an exception. We have developed several "Habitat for Humanity" houses, the town itself built some housing and made it affordable, we are planning to ensure that growth occurs in our growth area. Towns around Portland are under a tremendous amt of pressure – and all we hear on a regional basis is that we want the development in downtown Portland. This type of development is great. However, I cannot stand behind the State saying where it will be, regulating engineered community waste systems, etc.

Alan Brigham of the Department of Community and Economic Development explained the current law and rules guiding Tax Increment Financing (TIF) and how it works for residential development / affordable housing. The legislative intent for TIFs was to create new employment, and improve the tax base. It was designed to encourage commercial investment to offset housing development.

The need for TIFs comes from the limitation of municipalities to one source of revenues – property taxes, and how valuation is used to determine revenue sharing, school investment, and county taxes. Increases in valuation, arising from economic development, leads to loss of state subsidies and higher county taxes. Municipalities face becoming a net revenue loser. TIF is simply a mechanism for holding a town harmless for the loss of subsidies from economic development projects. It is not a gift; it is a "hold harmless" program. A municipality does not have to report to the state in its municipal tax records what is collected in a TIF.

The legislative finding says that jobs and broadening the tax base is a public service. If the municipality were to use TIF districts to support residential development, the public purpose is less clear – the statute

does not support the social / public benefit of supporting affordable housing; it only mentions tax base and jobs.

Because of the sheltering effects the TIF creates, there are some limitations (because it's avoiding the taxes / garnering the subsidies). Because one town's use of TIF subjects the rest of the towns in Maine to an opportunity cost, there are limits on how it can be used: 25 percent of the area needs to be blighted, in need of rehab, or suitable for a commercial use; authorized project costs are fairly limited – capital costs for public use; directly related improvements; economic development projects.

DECD considered using TIF funding for housing projects, but it was unclear where the benefit would go: to the developer, the homeowner? Nothing worked. If TIF was used to support a 10-unit building of units of \$100,000 each, if the mil rate was 20 mils, town would shelter \$6600 (approx) from the state – their costs in local infrastructure to support that housing development would be much, much higher. DECD also considered using TIF benefit from a major commercial project to support low-income housing – but can't do that with the same sheltering effect because the law directs the benefit to be used for economic development.

Committee and Audience Discussion:

- Ed Suslovic: The City of South Portland is working with a developer on a brownfields site to create high-end rental housing, a \$1500 rental, gated community. This was done as a TIF under the "blighted area", used for the environmental cleanup of a commercial property (because rental, not homeowner). I am interested in adding affordable housing as an allowable project cost
- Mike Finnegan: About 3 weeks ago, I went to 3 ribbon cuttings in Norway, York, and Munjoy Hill – \$14 million in housing capital was created with a net economic impact between \$40 and 50 million. Housing is vibrant in Maine right now. Think about the world in terms of community development: the lending industry is really talking about the synergy between economic and housing opportunities. To do these housing projects, you call on a multiplicity of sources – CDBG, TIFs, tax breaks, ... TIFs are just one tool; other towns / states have addressed housing needs with TIFs. A housing TIF becomes an additional housing tool. I respect the challenges in the current statute, but we should be visionary in thinking about the future.
- Peter Mills: If we change the legislative language, this doesn't mean towns will use it.
- Alan Brigham: This discussion is based on what is currently there; it can be changed.
- Janet McLaughlin: Where we go doesn't even have to be a TIF – it can be something else. We're not thinking creatively to community preservation, mixed use, and affordable housing.
- David Tobin: A lot of us to see statutes as ways of forcing communities into doing things they don't otherwise want to do. Housing means more costs, higher valuation, less funding from the state for education...
- Mary Ann Hayes: TIFs are not necessarily a deal with a developer; some are just targeted areas
- Alan Brigham: The majority of TIFs are around a contract with a developer
- David Holt: Has anybody looked at the impact of TIFs on school funding?
- Alan Brigham: DECD has not; maybe MMA has? As long as the state funds education the way we do, you are not going to be able to get around this problem. The shelter from a TIF is fairly minor compared to the impact your new housing is actually having. There have been 179 TIFs created in Maine, over 150 remain active, all over Maine in all kinds of communities.
- Mike Finnegan: When people hear the term affordable housing, they think of really low income. Affordable housing also serves young single folks, senior citizens, those that will not create that impact on schools.
- Ed Suslovic: We need to keep an eye on the demographic trends. Public school enrollment in Maine is on the decline; we need to consider what we are going to be doing for our elderly.

NIMBY, Infill, and Growth Caps

Beth Della Valle of the State Planning Office presented a brief history of the growth caps bill that was before the last legislature (*HANDOUT*). SPO is seeing more growth caps, especially in southern Maine, but towns don't have guidance for when to use caps or even necessarily knowledge of what they are

good for. Many towns, e.g., in York County, are not using growth caps as a meaningful planning tool, but because everybody around them does.

SPO asked for legislative guidance or direction to create rules on how SPO would review local growth caps, but did not get them from the legislature. As a stopgap approach, SPO is developing some guidance documents, but they won't have the same force.

SPO sees both good and bad reasons for growth caps. The Bill proposed last session includes some legitimate bases for implementing growth caps – e.g., temporary caps, as a way to direct growth away from rural area, as a means to deal with unforeseen impacts. SPO is opposed to the use of caps as a way of towns saying “we just don't want growth” – that attitude drives housing costs up, drives development to the next town over (or two or three over) – towns that aren't historically prepared to deal with the development. While those taxes are low at the moment, this will probably push it up pretty quickly.

Committee and Audience Discussion:

- Ed Suslovic: A lot depends on where you are in the state, but in the faster growing parts of the state, there are many examples of active growth caps, or towns adjoining growth cap towns considering growth caps. This is a critical community preservation issue. Growth caps by themselves do nothing to alter the pattern of development, just the pace of development. It just takes a while longer for it to happen... In fact, what we have found working with developers trying to build higher density developments – a growth cap is a significant barrier. Large housing projects are infrastructure-intensive – and expensive. If a project is projected to be 300 houses – and you need to build the infrastructure to support 300 houses – and local growth caps only permit 10 houses to be built a year to go with that infrastructure, it just can't be done financially. Commuting times in Maine are going up. In some sections of Maine, commuters are following the jobs, but in southern Maine, people having to move further out to afford housing to go with that job
- Beth Della Valle: Except for one, all the growth caps in place are town-wide caps, and they're all permanent caps. Durham has adopted a temporary cap, differentially between growth and rural areas – 30 units per year in the growth area, 15 in the rural area. There is no consistent methodology in developing the numbers in these caps. I have yet to find one growth cap that I find consistent with their comprehensive plan.
- Jeff Sosnaud: Growth caps are a pretty blunt instrument; why are people not looking to fine-tune these instruments more carefully? What's the motivating force?
- Beth Della Valle: It depends on what the local motivating force is for adopting a growth cap. If it is an anti-growth sentiment, a blunt instrument is good enough. Some towns are working to address shortfalls in the state funding formulas – you're “punished” for more housing. Some formerly rural towns have been seeing the highest increases in housing are now facing the bills for that – schools, roads, government, planning. Differential caps have been discussed for the last dozen years, and it's just starting to happen. There is a little bit of a concern about legal right to do this – when towns don't see the explicit authority to do it, they get nervous about a challenge.
- Mike Finnegan: The case law on growth caps isn't completely defined. The Fair Housing Act has not been tested against Home Rule and a growth cap as being exclusionary for affordable housing within a community.
- David Tobin: Scarborough is building 200 new homes a year, a new HS addition. Windham has about 50 new homes a year. A lot of planning is in 20 year increments; if we suddenly got 200 homes a year, it would throw a lot of planning out the window.
- Ed Suslovic: It is a blunt instrument. I think one of the reasons towns go for it is because state fiscal policy leads it in that direction. The vast majority of growth caps I'm familiar with specify that age-restricted housing is exempt from the cap, yet if you want to build housing that can accommodate households with children, you're out of luck. Is that something we want to be encouraging in Maine? Municipalities do have impact fees available to them to assess the development with the costs of its impacts. Finally, I think Rep. Tobin's point is an important one.

There are communities that do face unprecedented and unexpected impacts, and we had a “circuit breaker” type provision in the language at some point to give communities an “out” for two-years while the town could step back and plan? This Committee has the option to propose something; the Administration will not be proposing something this session. Without transfer of development rights, growth caps are a significantly blunt instrument – you face challenges of “taking” if you put a high cap on the growth area and a very low cap in the rural area – essentially taking the value of the rural land.

- Peter Mills: What is the current status of mobile home parks?
- Beth Della Valle: Each community must provide areas where mobile home parks may be sited. There are provisions for what is an acceptable site and allowing communities to have standards for “look and feel.”
- Peter Merrill – I would be fired if I didn’t point out the link between the mobile home law and the Great American Neighborhood bill.
- Ed Suslovic: I’ve heard that from school valuation, mobile home parks are the best you can do – lots of kids, low valuation development, but yet you still don’t see them done.

Transportation

Kathy Fuller of the Maine Department of Transportation (DOT) introduced The “Transit Bonus.” A new law was passed last year that allows Maine DOT to capture a piece of the highway funding and allow for a municipality that is already allowing some form of transit service to increase their contribution with a dollar-for-dollar match from MDOT. This is a brand new program; it has not been launched yet. Letters are going out to communities in the next couple of weeks, with the money to go out in the summer. Funding is coming from the Highway Fund (state dollars from fuel, excise taxes, fees). MDOT already supports operations, but this is the first time the Highway Fund has been used for something like this.

HANDOUT – This is a good beginning, and we’ll know more about it as we use it. We’re planning \$200,000 in the first year, \$300,000 in the 2nd year, and then go back to the legislature to talk about benefits / impacts. By MDOT’s calculations, forty-seven communities will be eligible for the funding. The communities that are eligible are so because they are dense enough to allow transit to be developed and used. Towns that are spread out cannot support transit. One of the reasons we support Dunston Corners is that it allows densities that will be able to attract and sustain transit.

The department has not taken an active role in transit-oriented development projects, although we have been having discussions with interested developers over the years. We would certainly like to see more of it.

- *Question:* Looking at the problems, it is not a problem of running busses from the outlying communities into the center, but how they get around the center. People aren’t going to give up their own auto when they get right to their office, if they would have to get to a central location and then take a cab.
 - *Response:* The Bonus program is looking to promote extension of services in an already dense and serviced area.

HANDOUT There has also been an internal dialogue regarding the creation of a new program related to Access Management. Two other key components of Access Management program (in addition to the newly promulgated rules and technical assistance) include acquisition of access rights on high-priority highways and development of incentives and alternatives for towns impacted by lack of access development rights (e.g., develop parallel routes / links between arterials).

The next MDOT budget has a small amt of funding to pilot these approaches – purchase of development rights and mixed-use frontage roads.

- *Question:* How do we pay for the acquisition rights? Maybe bonded and paid for with a small increase with the gas tax.

- *Response:* This program will focus primarily on national highway system where posted speed is over 50 MPH. We can see today where congestion is being experienced and where it is going to be 20 years from now based on traffic counts and modeling.
- *Question:* The first mistake is paving the road. Most of it is residential curb cuts, one after another.
 - *Response:* In some areas, it's not just residential, but also commercial. Once the curb cut is there, it's hard to have them relocate or make adjustments based on a change of use.
- *Question:* Why has that development occurred in this sprawling, multiple curb-cut fashion? What are the local municipal ordinances regarding density? If you cannot allow density, what else can people do? The same night they were talking about the impacts of the traffic impacts of this walkable community (Dunston Corners in Scarborough), they were discussing an office park corridor where it was being boasted that you wouldn't be able to see one building from another.
 - *Response:* Another big change is that municipalities are no longer building local streets; only the state is building streets these days...

Committee and Audience Discussion:

- Beth Della Valle: Another reason those roads aren't being planned and built is the NIMBYism. In my community, there is a real paucity of roads, and every time anybody suggests connections, there is a flurry of pressure to not even address it.
- Ed Suslovic: The number-one challenge in building housing in Portland is traffic.

Building and Rehab Code

Bruce Hensler from the Maine State Planning Office addressed the issue of a statewide building and rehabilitation code. Code enforcement in Maine is a patchwork quilt of state, local, and federal regulations. Creating a one-code-fits-all approach was very difficult for the Maine Building Rehabilitation Code Advisory Council convened by Governor King last year.

- *Question:* Some work that NJ, MD, RI did to find some more streamlined approach to the rehab of existing / older buildings, often in our downtown, was the impetus for convening that Council – New codes don't work very well for these older buildings. It's sad if we lose older buildings downtown because we can't really figure out how to save them.
 - *Response:* A team from NJ presented a great framework, but the Council rejected that. There is nobody in the state of Maine that takes complaints about codes, so a lot of that ends up on my desk.
- *Question:* Because there are two basic codes, is there any merit at all to having legislation that would say towns can pick Code A or Code B (as opposed to a uniform code)?
 - *Response:* Very simply, towns under home rule could develop any code they want to already; they could adopt Code A or Code B today. We come back to the problem of divergence with existing state legislation where there is not a match-up between state elevator or accessibility requirements and the federal guidelines without anybody to stand up for them.
- *Question:* What are the most common codes.
 - *Response:* There are two organizations, one is fire-oriented, one is building-oriented. The codes, dollar for dollar, are about equivalent. ICC (formerly BOCA) and NFPA (fire); it's a marketing issue.
- *Question:* How many of the 489 municipalities have a code?
 - *Response:* About 55% of communities are protected by a version of a code. Many of them adopt it, but don't update it, so some towns have codes that are 20 years old.
- *Question:* It seems like there is a convergence of interest, if not in a statewide rehab code, then in a model, in contractor licensing. We recognize that if you don't have a statewide building code, you can't have a statewide rehab code, or a licensed contractor. Before, there was no penalty if there was no agreement; there were almost incentives for the status quo. What if we put a deadline in – in 2 years, we will adopt this statewide code unless you do something else?

- *Response:* The codes have to have a home. Right now, the only home is the Fire Marshal's office, if you want to do ICC, you will have to create another state agency to administer it. The 2nd highest number of consumer complaints in the state has to do with shoddy residential construction; 2nd only to the Lemon Law. The lack of licensing is a statewide concern. This was proposed last year, sent out for study. There was a proposal that would require any contractors doing work over \$3000 to be licensed by the state of Maine and to follow a code; there would be a state Board to run the program... If that proposal went through, the contractors would be licensed to the standard of the international residential contracting code, which is one of ICC's codes...
- *Question:* So, you could have a contractor licensed by the state, legal by the local code, that doesn't meet the state code they are being held to?
 - *Response:* Yes.
- *Question:* What is the logic in having different codes in different towns? How is one town fundamentally different than others?
 - *Response:* "Maine is too diverse" – was the answer given to the Council. Maine is one of six states nationwide without a statewide building code. The insurance industry is likely to send their lobbyists up to this session to lobby for one...
- *Question:* A comprehensive building code would cover residential as well as everything else?
 - *Response:* It would make more sense to have a separate residential code, I believe. The Business and Economics Committee has jurisdiction. They had an interesting issue with the plumbing code last year... A building code would be separate from plumbing code, electrical code.

Rural Preservation Surrounding Growing Communities

Beth Della Valle of the State Planning Office presented background information on transfer of development rights (TDR) programs. *HANDOUT.* TDRs are not new; they're an attempt to even things out. The enabling legislation in Maine has been on the books for a long time, at least two municipalities have adopted them, but haven't used them. There are several TDR programs across the country. However, few have been used, and even fewer have worked very well – causing one to ask why.

There are some fundamental reasons:

- Setting up a TDR is not an easy thing to do. It is having the public get involved in the marketplace;
- You need a good sense of the business of things – setting prices and monitoring / adjusting them over time;
- The places where they have worked have been in hot real estate markets, where there is pressure; and
- You need ongoing local record-keeping, bureaucratic capacity.

With one or two notable exceptions, this just hasn't really worked very well at the local level. At the regional level, one of the earliest examples is also one of the most successful, Montgomery County, MD. In that case, you had a hot market, a well-off community, and a capable bureaucracy. NJ has a state TDR program – but it has never been used.

There is a distinction between purchase of development rights and development rights bank – Montgomery County has a purchase of development rights program – sellers and buyers interact directly, not through the use of an intermediary (selling to the county).

HANDOUT - Density Transfer Fee – Fee in lieu of TDR program. A density transfer fee is different than an impact fee, different than the negotiated process in Scarborough. Set infrastructure in town, though an ordinance, with a set of calculations and delineation between areas where increase in density was wanted and lower density was wanted. I don't know if this could be done on a regional basis. I'm not sure if this requires anything out of the legislature. What would probably be more useful is some technical assistance...

I think we need to dispel the notion that a statewide TDR would ever work. Anything that we would develop statewide would have to reflect regional sensibilities. While it may have a central administration, would have to be managed by regions (at the largest).

Committee and Audience Discussion:

- David Tobin: This is something we tried in the early 1990s, and couldn't figure out how to make it work. The density transfer fee looks like something we can use. The challenge to a TDR program was finding a willing seller and willing buyer at the same time. This density transfer fee looks like an option. I don't think Windham would be in favor of buying development rights in Gorham and building it up in Windham. We have a 2-acre lot minimum, which we are hoping to use as leverage to encourage density in our growth area in the future.
- Ed Suslovic: In Scarborough, we used several different formulas to get to the \$1 million impact paid by the Dunston Corner developers – traffic impact, school enrollment, which the town will be using to further the town's preservation ideals (\$ will go to the Scarborough land conservation trust). It is frustrating, though, that we cannot address impacts and move beyond town boundaries.

Next Steps:

Next meeting scheduled for **December 9th – 9:30 – 2:00.** This will be committee discussion – with cloture scheduled for December 20th, 2002, this is our shot to get our foot in the door.

- Taxes – incorporate CPAC short-term next steps from Mary Ann Hayes' handout as items of discussion as starting point. The paper from the Muskie student includes a piece on Vermont's Capital Gains on Speculative Sales policies.
- Look forward to strategizing as a committee to see which areas are the most important to follow up / discuss
- Still interested in looking at the Retroactive Moratoria Bill introduced last session bill that would make citizen initiatives on retroactive moratoria illegal (Ed Suslovic).
- One – two page summary of major items and rough proposals based on the 11/25 meeting, outlining issues to address, will be provided to members.

List of Handouts Distributed at the Meeting:

1. Agenda
2. Memo from State Treasurer Dale McCormick
3. Municipal Revenue Sharing Monthly Distribution, FY 95 – 03
4. Municipal Revenue Sharing Comparison between RS I and RS II
5. Property Taxation Handout, 1975 – 2001
6. 2001 Municipal Valuation Return Statistical Summary
7. What Happens When Local Values Go Up and Tree Growth Scenarios
8. Homeowners Guide to Property Tax in Maine
9. Chapter 908: Deferred Collection of Homestead Property Taxes
10. Comparison of Initiative Proposals Currently on File with Secretary of State (DRAFT)
11. How Tax and Spending Policies May Influence Locational Decisions and Possible CPAC Areas of Short Term Tax Reform Recommendations

12. Muskie Tax Policy Paper (DRAFT)
13. Affordable Housing Memo to CPAC
14. LD 2099: Regulation of Affordable Neighborhood Development as proposed
15. LD 2099: An Act to Revise the Definition of Affordable Housing as adopted
16. The Use of Tax Increment Financing for Affordable Housing
17. Chapter 206: Municipal Development Districts
18. Rate of Growth Ordinances Memo to CPAC
19. LD 2062: Rate of Growth Ordinances as proposed
20. LD 2062: An Act to Clarify the Use of Municipal Rate of Growth Ordinances as adopted
21. New Transit BONUS Payment Program (two handouts)
22. Highway Access Acquisition and Road Network Connectivity White Paper
23. Report on the Development of a Maine Building Rehabilitation Code Executive Summary
24. Transfer of Development Rights
25. Density Transfer Fee: A Fee in Lieu of a Transfer of Development Rights (TDR) Program

**Community Preservation Advisory Committee
December 9, 2002
9:30 – 2:00, State House Room 437
Meeting Summary**

Attending:

Rep. Peter Mills (Chair), Skowhegan, Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant
and former Realtor
Peter Judkins, Maine State Housing Authority
(Board) and Franklin Savings Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque Isle
David Holt, Town Manager, Town of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal
Analysis (committee staff)
Rep. Scott Cowger
Kathy Fuller, MDOT
Bruce Van Note, MDOT
Harvey Boatman, DoE
Peter Merrill, MSHA
Alan Brigham, DECD
Peggy Schaffer, DECD
Elaine Clark, BGS
Mary Ann Hayes, SPO
Chris Hall, Maine Chamber of Commerce
Kirsten Hebert, Maine Municipal Association
Ginger Davis, MEREDA
Linda Gifford, Maine Realtors
Jennifer Burns, Maine Audubon

Summary of Actions / Decisions

Bills to be Proposed by CPAC Legislative Members to the 121st Legislature

1. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
2. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
3. Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
4. Create a bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
5. Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.
6. Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
7. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).
8. Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

Non-Legislative Actions Recommended by the CPAC

1. Insert incentives / points for regional cooperation in Transit Bonus rules. MDOT is reviewing the rules, which have not been finalized, to see if modification is possible in the short term.
2. Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, *or* create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)
3. Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).

4. Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Administrative Update

The focus of this meeting is to finalize a list of any legislation the Committee wishes want to introduce in the 121st Legislature. The rules of the Legislature generally only permit submission of bills into the first session, so this may be the only opportunity for the next two years. Also, the Committee cannot introduce legislation as a Committee, so it is up to the six legislative members of the Committee to sponsor any legislation the Committee puts forward.

If the members concur, the Committee will have its next meeting in early January to review the list of bills submitted to the Revisor, continue the discussion and elaboration of details, and set the long-term agenda.

CPAC will be submitting a report to the Governor and Legislature in early January, which will include the legislation that the Committee supports, as well as recommendations for non-legislative action.

Transportation: The Transit Bonus Payment Program and Permitting Motor Vehicle And Motor Vehicle Fuel Revenues To Be Used To Fund Transit

Presenters: Kathy Fuller, MDOT; Bruce Van Note, MDOT

HANDOUT – Copy of passed LD for Transit Bonus Payment Program

The Chairs posed the question: “Are there legislative changes needed to use a portion of the gas tax (highway fund) to support transit?” The Transit Bonus Payment Program appears to do so. Article IX, Section 19 allows fuel tax revenues for highways, and past interpretations of the Court and past attorney generals are fairly strict on this. The short-answer to ‘is there a way to leverage it to provide incentives’ is Yes, and it has happened in the Transit Bonus Payment Program.

The Transit Bonus Payment Program builds on the URIP (Urban-Rural Initiative Program – the old Local Road Assistance Program) to provide additional funding to municipalities’ annual disbursements. The program allows a bonus to that check – which must be used for highway purposes – if that municipality increases their transit spending on operational expenses and capital above a base year’s amount (FY ’00).

The PL that created the Transit Bonus Payment Program is significantly different than the original bill submitted by Rep. Boyd Marley. The original bill would have increased General Fund expenditures for transit. In the law that passed, if a municipality increases investments in transit, there will be a corresponding increase in their local assistance check. Again, and consistent with Section 19, that funding, including the increase, must be used for highways.

The last section of this law (Chapter 681; LD507) requires rules; those are in process right now. MDOT is planning on taking applications to this program next year (2003). There’s an overall funding cap of 2.5% of the URIP program – approximately \$475,000 annually.

- **Question:** A community that had a program in existence prior to the base year might not have the same benefit as somebody that is making improvements?
 - That is correct. If a municipality was “doing it right,” and had already increased their levels of funding to transit, it would not get the same benefit as somebody that improves their service during the time of this program.
 - **Response:** Maybe this isn’t the year to do it, but I would like to see a way to reward communities that undertake new transit programs and benefit communities that have already made the transit investment that is working well.

- *Question:* Is this going to be a yearly thing – with increasing applications, won't you have decreasing benefit to towns?
 - That's a possibility. There will be an opportunity in three years for the Legislature to reexamine the program and expand it if there is a lot of interest on the part of municipalities.
- *Question:* Are any of you aware of efforts to change the constitutional limits on this to permit the funding to be used beyond highways and bridges?
 - That is an ongoing issue. To date, the court has interpreted that section of the Constitution very closely. However, most of the opinions of the Justices are legislatively generated. In recent history, in the past 8 years, I'm not aware of an effort to amend the Constitution that got much support.
- *Question:* Have we been able to tap federal money for key transportation infrastructure?
 - Yes, there are federal highway funds, federal transit funds, federal airport funds – and each of those are very compartmentalized.
- *Question:* Has there been a state needs assessment, or anything like it, that might educate the Committee to the need or potential for transit, if the Legislature would only support it?
 - MDOT recently completed a new Needs Assessment, which highlights some high priority needs across the state. MDOT can provide highlights of the Assessment to the Committee on transit needs included; the transit needs outlined primarily focus on bus systems.
 - MMA put out a transportation funding issue this summer in The Townsman that was very good.
- *Question:* What was the rationale for the requirement that municipalities have operated a transit system for three years to be eligible for the Program?
 - We wanted to benefit towns that are really making a consistent effort to provide transit opportunities, towns that that just needed a boost to get them to the next level.
 - The 47 communities that are eligible for the program have a fairly heavy maintenance load, so we wanted to offset their costs in transit so they could do more road maintenance. Those 47 communities (which seemed like a high number to the Committee) include senior bussing operations.
- *Question:* A lot of communities have had trouble converting residents from a car-oriented culture to a transit- or bus-oriented culture; what are the types of programs that will assist people in making that transition, rather than just adding a bus?
 - There are a number of education / promotion programs through the programs MDOT has today – kids in transit, rideshare, etc. The key is to make sure that the option is seen as an alternative to meet their convenience needs.
- *Comment:* I don't see anything in this program to encourage regionalization. For example, in the Portland area, South Portland has its own transit system; they pulled out of Metro. We should be demanding that towns in a region coordinate, connect to one another, and best serve the customer. I'm getting increasingly frustrated at the real lack of connection between land use and transportation. The only way we are going to have shared transportation is to increase residential and commercial (destination) density. Every community that we're trying to build a denser community gets blocked by the community because of traffic concerns. There ought to be a formula where communities are rewarded for increasing allowable density from MDOT. Need to get you some statutory authority to have that carrot – and stick.
- *Comment:* It's rare to see buses crossing the Casco Bay bridge more than one-third full – the south Portland to Portland commute would be the ideal one to use transit on. If that's the test case, what are the figures, is it working, is it not – and why not? There is definitely a car culture; what are the incentives to change that behavior?
- *Comment:* Communities across the country are investing in transit-oriented development; if we don't allow it, they're not going to come. The time is ripe for the Legislature to declare we value transit. It may be like the Municipal Investment Trust Fund, which

- wasn't funded for 10 years. I don't see why we shouldn't declare this as a value, change the constitution, and wait a few years until the revenue returns to put some money into it.
- *Question:* In terms of the rule-making for the Transit Bonus Payment Program, would it be possible to build in the preferences for density to create some incentives within the rules?
 - My concern would not be legal, it would be if we were going beyond the scope of what the Legislature originally intended. This bill was not seeking to address regionalism concerns; this was looking at a modest first step to reward those transit providers that want to take the next step.
 - *Question:* You will probably have a greater demand for this Program than you have money, so if you are setting up a scoring / priority system, would there be a way to put some favor on those proposals that come forward that suggest regional integration, transit oriented development, greatest benefit to the greatest number of people (density), etc?
 - The rules are currently being written; MDOT will ascertain their status. They may be very close to being published.

Proposal: Submit resolve to amend Article IX, Section 19 of the Maine Constitution¹ to permit funding transit from motor vehicle and motor vehicle fuel revenues.

- If this section is opened up, many legislators and other interests may want to add a lot of other exemptions, e.g., reimbursement of utility relocations.
- Can MDOT present an alternative to a Constitutional Amendment to provide significant encouragement and funding for transit development / support? Other states are.
- The Legislature has had this debate repeatedly; the highway fund has been protected by the Legislature because their constituents want to get to work.
- The only way that most Mainers can get to work now is by getting in their single-occupancy-vehicle because they don't have another choice.
- If we open up the highway fund, the Transit Bonus Payment Program will likely get caught up in it.

Proposal: Insert incentives / points for regional cooperation in Transit Bonus rules.

- MDOT will review the rules, which have not been finalized, to see if modification is possible in the short term.

Proposal: Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)

Proposal: Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, or create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)

Proposal: Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.

¹ **Section 19. Limitation on expenditure of motor vehicle and motor vehicle fuel revenues.** All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

- It would be very difficult for the Legislature and MDOT to change the main transportation funding formula.
- MDOT and SPO have talked about amending the Comprehensive Plan Review Criteria rules related to transportation and comprehensive planning, connecting transportation and land use. That might be an opportunity to help communities do the planning that we can later reward.
- Providing preference to communities allowing increased density would be a major policy shift for MDOT. It would almost certainly have to be directed by the Legislature.
- I'm not sure that communities always have the ability to control the way development happens. I wonder if communities know what the state goals are regarding transportation and development densities.
- The mechanics for tying planning to funding would be an LD that called for more detailed rules around transportation, either in the Growth Management Act or the Sensible Transportation Act, with the hook that MDOT then find a way to target funds to those areas that are implementing / meeting those goals.
- When a town does a comprehensive plan, there are certain areas required, transportation is not one of the required inventory areas – it should be.
- Transportation is generically included in the required Public Infrastructure section. When you go to the next step, there are criteria for review, putting something in statute to direct DOT and SPO to clarify those rules regarding transportation would help.
- MDOT's preference would be to amend existing administrative rules that we have, rather than to amend the Growth Management Act. MDOT and SPO could work together to develop some language for an LD to direct that effort.

Transportation: Using Public Transportation for School Transportation

Presenters: Harvey Boatman, Department of Education

The Chairs posed the question: Are there opportunities for increased efficiency using transit to transport older students to/from school?

The federal definition of a school bus is very specific; any unit transporting more than 10 children on school-related activities is a school bus; that vehicle must then meet Federal Motor Vehicle Safety Standards. There are circumstances, in some locales, where transit has been used for some parts of their transportation – most often used for activity that start at the school and go somewhere else.

- *Question:* So, in Boston, public school students are no longer issued T passes?
 - They may be. I'm not aware. I do know that Boston has one of the largest fleets of school buses in the US.
- *Question:* Is there a differentiation in the law / rules between secondary and primary?
 - No.
- *Question:* Students that are 18 can't get on a municipal bus because it doesn't have flags and bars?
 - That's the regulation. There are exceptions, but they are fairly well defined. The school bus provides the safest form of transportation in the U.S. A child getting to and from school in any other means is eighty times more at risk. School bus drivers require a higher license endorsement (Y) than transit drivers (P). The Y endorsement requires fingerprinting, background checks, training for special needs children, annual physicals, etc. Another fundamental concern is that most municipal transit systems are not equipped to meet the needs of special needs children, which a school bus does. Also, many states have regulations that require exclusive use for school buses during school hours, to separate the general public from little kids.
 - *Response:* It sounds like there are a lot of impediments to this idea.
- *Question:* How is Maine's school bus fleet rated in terms of air quality?

- On a national basis, Maine is rated a C – our school bus fleet averages about 8 years old; any bus over 10 years old is polluting 95% more than a 1 year-old bus. A 2004 bus will have significant new controls, meeting a new set of standards. Our emphasis is to improve turnover to move the older buses out.
- **Question:** What is our goal for the school bus “grade?”
 - We want to get to no bus more than 10 years old, which will get us to a B or an A. In addition, Maine DEP has been working with the Department of Education to test the buses.
- **Comment:** I see half-empty school buses following half-empty transit buses. I would like to think that a small, but dedicated working group could tease out Maine regulations to permit this. We also need to look at kids overall health – the risk on buses is not just accidents, but obesity, diabetes, etc. It is also worthwhile to encourage kids that riding a public bus is a good thing. A key consideration is the alternatives we can provide to make the alternatives to buses safer, such as bike paths, sidewalks, and crossing guards.
- **Comment:** I would suggest move this item to the mid-term agenda, include it in the CPAC annual report, and ask Harvey if he could work with MDOT and Motor Vehicle to move this further with some comparison of the different standards so we could examine that in relation to the fleets we have in Maine. If there are only 47 transit systems, the universe isn't too big.
 - **Response:** That would have to be done through the commissioner, because time in this Administration is short.
 - There was a bill last session to permit the use of school buses for other uses, which was defeated.

Affordable Housing: Using Tax Increment Financing for Affordable Housing

Presenters: Alan Brigham, DECD; Peter Merrill, MSHA

The Chairs posed the question: If we are in agreement that tax increment financing (TIFs) are an appropriate tool to encourage development of affordable housing in our communities, how can we proceed?

MSHA and DECD agree that it is a good tool, but differ in their opinion of how it should be administered. DECD suggested that the existing TIF statute is a good template for an affordable housing TIF, and that the program would best be administered by MSHA. MSHA suggested that the most viable projects mix uses (residential-rental, residential-ownership, and commercial), so it makes sense to have the existing TIF statute integrated as well. MSHA would assist DECD in its application by providing its assistance and expertise.

- **Question:** Why couldn't the TIF be extended to owner-occupied housing?
 - a. Incorporating a mechanism for owner-occupied housing has been very difficult for MSHA (e.g., who receives the benefits; the developer or the buyer).
 - b. **DECD Response:** That's further argument for stand-alone legislation for affordable housing that could address owner-occupied and rental housing. It is not a good fit with the commercial bill. I would propose a stand-alone statute would have its own funding cap, to get around the cap in the existing TIF authorization, so that using the TIF for housing does not limit the municipality in using it for commercial purposes.
- **Comment:** I don't see residential development and commercial development separately. They are absolutely connected.

Proposal: Submit a bill proposal that is fairly non-specific and assemble a CPAC subcommittee of interested members and other key parties (MSHA and DECD must be involved) to discuss and decide on the details of the bill, such as scope, applicability, administration.

- **Comment:** As a representative of a community that has done commercial TIFs, I have some hesitation. The impact of the sheltered taxes that has been passed on to other

communities, while we are holding the TIF, is not insignificant. I am very worried about having a last resort financing tool for commercial purposes diminished by having that TIF capacity increase significantly. I need to be shown the need for affordable housing TIFs are complementary to commercial TIFs and necessary.

- *Comment:* It would be up to each community to use this tool or not.
- *Comment:* Has the Committee considered a regional TIF tool? The people living in that community are a plus for the whole region. Are there opportunities for regional agreements, similar to FirstPark?
- *Comment:* Should the Committee be focusing on using this tool in service center areas, which are facing the pressures?
- *Comment:* My city has a public housing authority that serves a number of families, and has taken advantage of several programs. I'm concerned about the diminishing of the commercial TIF tool; we continue to need jobs more than housing.
- *Comment:* There would be nothing to require towns to use this tool. If anything, it would be an enhancement of local flexibility.
- *Comment:* One option is to limit its applicability to the housing markets that are deemed unaffordable. Whether we did that or not, those are probably the only places that would adopt it.
- *Comment:* Those are often the areas that are most affected by the sprawl problem.
- *Comment:* I think this is a tool that communities such as mine could use; I would be reluctant to tie it to the existing TIF; it should be a stand-alone tool. If we mix affordable housing in the commercial TIF, we may never use it again. Sheltering the value of the new housing would be very useful.

Affordable Housing: Revisiting LD 2099, the Livable, Affordable Housing Bill

Presenter: Peter Merrill, MSHA

LD 2099 never came to a vote in the House. It probably could have passed in the Senate, but wasn't voted on. The bill received an "ought to pass" recommendation from the Natural Resources and Economic Development committees.

- *Comment:* LD 2099 may be a good place to start, but there may be things to make it more palatable, less of a threat. E.g., two issues came up from the last meeting that we may think about: authorize the density transfer concept / approach; and incentive rather than mandate affordable housing, making it a more palatable opportunity by sheltering value against the school aid / funding formulas.
- *Comment:* One of the missing links in LD 2099 is a road width and right-of-way requirement. The bill addressed minimum lot size and frontage, but not the importance of road width. SPO has been working on some model ordinances that cover those types of issues.
- *Question:* Does LD 2099 have any value to be salvaged?
 - *Response:* It depends where it comes from. If there is a whisper of state mandate, a project invoking this bill will not be supported by our town council.
- *Comment:* The general rule of thumb for developers is you don't want to build projects that are 100% affordable. 30-40% of the units are about as high as most people feel you ought to go. One approach is to incorporating mixed use, to create walk-to-work opportunities. LD 2099 used the concept of a state board to ensure that all those come together.
- *Comment:* You could flip-flop it; not make it mandatory, but have some meaningful incentives (e.g., TIFs).
- *Comment:* In Massachusetts, the decision rests at the local level, but if the town turns down a project with a significant affordable housing component, it can be moved up to the next level (the 40-B program).

Proposal: Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

- Use the CPAC subcommittee that is examining residential TIFs to clarify the bill.
- *Comment:* Municipalities, councils of government, and the MMA policy committee may have some interesting input into this conversation.
- *Comment:* There are thousands of Mainers living in shelters that cannot afford to rent or buy a place to live because municipalities acting out of rational self-interest put the costs off on the next town. That is the most rational thing to do.
- *Comment:* I'm sensitive to the fact that there was a certain momentum initiated last session. I'd hate not to have something go in this session and lose that momentum. Maybe the Committee can recommend a bifurcated approach, move forward legislatively, but also work on the outreach and communication front through some public forums and consciousness-raising.
- *Comment:* I have a pretty strong philosophical objection to legislation that would mandate affordable housing. We're making it work in our town, with local reviews and regulations. However, we're not getting the legal guidance that we need from the state. If we're developing regulations, state government should be helping us work on this. Right now, we're only getting the information from MMA.
- *Comment:* I share the wariness in undertaking a battle we are likely to lose, but everything we try to do to address the problem of sprawl is going to come back to local control. It's the thread through everything we do. If we cede the local control argument out of the gate, we have lost already.
- *Question:* Can the municipal sector articulate how the state can help municipalities meet these goals?
- *Question:* Would municipalities like to see some goals? A menu of options that towns could use for a local solution?
 - *Response:* The state goals and the criteria rules have been in place since 1989 and we haven't seen meaningful action from the municipalities in any way. I'm happy to come up with alternatives, but need some committed local interests involved – and willing to push those options locally. At the same time of moving down a legislative path, I would encourage a specific outreach effort, engaging partners, including MMA, DECD, MSHA, SPO to do some quick outreach to bring that input back in to modify this bill, if appropriate.
- *Comment:* We talked about MMA's opposition to this bill last session; it was significant. But there was a host of other organizations that supported it. There has been a lot of outreach done; we are not the first task force to address this. MMA staff have been involved along the way. This has not been done in a vacuum; municipal officials have been involved. This is the epitome of a regional issue, and we don't have a means to deal with regional issues in the state.

Proposal: Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).

- Jim Lyson from the City of Lewiston is planning a workshop on this topic in the spring.

Building and Rehab Codes

Presenter: Rep. Scott Cowger

Rep. Cowger will be introducing legislation regarding contractor licensing. This has always failed because it would require mandated building code put on municipalities. To address this, the proposal will create a licensing system, similar to electrical contractors, where contractors would be licensed according to a state licensing code. This would create some basic standards

statewide and be enforceable by the state. However, the licensing code is for the licensees only; municipalities don't need to enforce it.

- *Question:* Under your scenario, if a municipality had its own code that was in conflict with state code, how would that work?
 - The state code would be a state minimum. Generally municipalities would have a higher level. If they are just conflicting – not better or higher – but different, we would have to figure out how to deal with that.
- *Comment:* Six states do not have a statewide building code to some degree; however, not all of those are mandatory or applicable to single-family residential construction.
- *Comment:* The legislation Rep. Cowger is proposing is strictly limited to 1-2 family homes; it does not apply to commercial building contractors.
- *Question:* Most towns are using the BOCA (international code), Chapter 24 addresses rehab. Does that cover what we need?
 - If you look at what towns are using, they are either using BOCA or the Life Safety / Fire Protection industry code. On top of that, there are variations depending on when the codes were adopted and if they have been updated. Both of the national associations have developed rehab codes to go with their base codes. If a community updates their codes, they will likely adopt rehab codes as well. However, if they adopted a building code in 1980 and haven't touched it since, they probably don't have a rehab code.

Proposal: Create a bill to offer incentives to communities for adopting both a building code and the rehab component of either type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.

- *Comment:* The lack of a consistent building and rehab code is a significant factor to the cost of doing business in Maine; a tremendous amount of expense is related to figuring out what codes apply. Many of the local developers are small-business people that don't necessarily have the expertise. One incentive might be economic development funding – strip away barriers to development.
- *Comment:* Large commercial buildings are generally built to a national standard anyway. Developers generally don't look to local standards that probably won't be as high.
- *Comment:* We want to be able to allow developers to bring rehab projects up to code incrementally, otherwise there is an incentive to move to greenfields.
- *Comment:* I think one code, rather than each town just having a code may assist developers in determining what the cost of the project will be.

Clarifying Growth Caps

HANDOUT – the language provided to the task force (pre-LD2062)

The original language of LD 2062 recommended by a subcommittee to the last growth management task force outlined three types of caps, and put some guidance in place for each type. In the Growth Management Act a couple years ago, there was language added that a town cap would have to be consistent with the plan (and therefore consistent with the goals of the Growth Management Act). However, there is no guidance or rules for towns, and no direction to SPO to develop that guidance.

- *Comment:* I don't see why it doesn't make sense for towns to target their growth according to their plan. I don't have any issues with that.
- *Question:* Would you support limiting a perpetual cap to let your planning catch up?
 - Although permanent caps make perfect sense in a community sense, they encourage sprawl in a regional, statewide sort of way.
- *Comment:* Last year, MMA was fine with revisiting the cap and ensuring it's consistent every 2 years. We want to ensure that municipalities that have caps can get the guidance

- they need to ensure that they are consistent. Beth's idea to get some rules in place would be very useful.
- *Comment:* right now there is almost no guidance in state law
 - *Comment:* I don't believe that Windham has an active growth cap, but last year, we had 160 housing starts. What happens if we get 360? The town needs that tool to give them a break, a chance to catch up.
 - *Comment:* What this provision prevents is the communities that are really putting a cap on growth because they just don't want any additional growth.
 - *Comment:* I feel this bill is absolutely essential from this community's perspective. Growth caps may be very sensible for a municipality, but they have dire regional impacts. Growth caps do not distinguish between the types of development; they in fact often encourage sprawling patterns rather than clustered, denser developments that need to have a certain number of permits per phase / year to be economically viable. I thought there was a circuit-breaker type clause in the legislation proposed last year; if an emergency situation, the town could implement a 6-month moratorium, and they could adopt a growth cap after that for up to 2 years (with opportunity for an exemption).
 - *Response:* That would have been in the rule-making.
 - *Comment:* I think there needs to be something to address rate-of-growth; what happens when your build-out scenario is happening within 4 years instead of 20? That might happen under rule-making, but it needs to be addressed.

Proposal: Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).

Proposal: Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Citizen-Initiated Referenda Imposing Retroactive Moratoria

LD 796 was introduced last year to address issue in Portland (the Munjoy Hill development and the resulting citizen referendum) and the uncertainty for developers and planners created when a citizen-initiated referenda can reverse, retroactively, a city's or board's decision. During the session, LD 796 was associated with other citizen-based bills, which hurt its chances.

- *Comment:* Although this can be used for affordable housing, it can also be used to stop the Wal-Mart from moving in. One might ask, "how else do you stop Wal-Mart?"
- *Comment:* If it is this easy to do a retroactive moratorium and derail a project, why bother to put the effort into good community planning? How many projects that have the words "infill" and "affordable housing" in them face a lot of community bias? Citizen-initiated retroactive moratoria are the tools of choice.
- *Comment:* I believe MMA supported this last year
 - *Response:* Yes, but MMA would oppose it this year because we would have to support the rights for citizen referenda.
- *Comment:* In this case, you would have the unfairness retroactively imposed. This would apply equally to Wal-Mart and affordable housing permits.
- *Comment:* I could go along with something that allows referenda during the appeal period.
- *Comment:* The prohibition was on something that had already been approved. If the petition was filed before the approval, that was OK.

Proposal: Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

- The Committee would like a 1-page summary of the bill and what the issues were.

Tax Policies related to CPAC Issues

Some of the tax policies related to the mandate of the CPAC include tax incentives / support for working waterfronts, a version of Vermont's bill to reduce liquidation forestry by imposing higher capital gains taxes, and aspects of various tax proposals currently being debated in the public.

The Vermont law imposes capital gains taxes on land sales that benefit from liquidation forestry if use changes after land cleared. According to documents, the Vermont forest products industry hasn't seen a particular change in their actions, but the tax department has seen a change.

- *Comment:* This ties back to the growth cap bill. If we are actively pushing the development out into the white pine forests, I would be uncomfortable in supporting that type of bill. If we are making development easier where it should go, I think we can support that.
- This program has been in place in Vermont for about five years. It has not been a revenue gainer, but they have essentially stopped liquidation harvesting. VT passed two bills addressing liquidation harvesting.

The chairs have also considered a new idea for subsidies for dairy farmers, and other rural communities. A very small tax, in percentage terms (maybe 0.1% or 0.2%), on the gross receipts from big-box retail (stores of a certain size, or stores serviced by parking greater than a certain size) would generate maybe \$15 million annually for a Rural Communities Preservation Fund to:

- i. Generate price supports for milk;
- ii. Provide property tax relief for farms and working waterfronts (support current use valuations);
- iii. Set aside funding for Land for Maine's Future without having to go through bonding;
- iv. Support downtown rehabilitation.

Big box retail produces all these intangible costs; why not tax it and support those forms of land use that our state policy encourages? This bill could get support from the NRCM, sportsmen, agriculture, waterfront users.

- *Question:* Does the state usual tax things in small increments; is that something that is easily done?
 - Yes, there is a whole menu of tiny little special purpose excise taxes on all kinds of things.
- *Question:* Will your bill include Hannaford, Shaws, and LLBean?
 - Yes, but I don't know how else to do it.

Other active discussions are focused on the Circuit Breaker program; there will probably be activity this session. The Local Option Sales Tax and Chebeague Tax Proposal will also likely be discussed. The Chebeague proposal is being billed as the "Maine Personal Land Bank and Community Preservation Program."

Proposal: The Committee will not endorse individual tax reform proposals.

Proposal: If the CPAC develops criteria for evaluating tax proposals in relation to the goals of the Committee, members will be able to speak at the appropriate time.

Next Steps

The Committee should have a conversation that isn't focused around cloture, that addresses individual issues, goes into more depth; thinks more in long term.

In the Committee's report, we will want to try and open the door to have the possibility to submit legislation next session.

Next Meeting: 1/14: 10:00 – 12:00, location TBA <NOTE: Since the meeting on 12/9, the Legislature announced it would be in session at 10:00 AM on 1/14. A new time will be announced soon.>

Affordable Housing subcommittee volunteers: SPO, Alan Brigham, Peter Merrill, Ed Suslovic, Ginger Davis, Kirsten Hebert, Ted Koffman and/or Peter Mills. DECD and MSHA will be the substantive leads on the TIF discussion.

At the end of the green handout there are several areas next session that are related to the CPAC goals: school construction rules; stormwater rules; contractor certification; (possibly) access management.

**Community Preservation Advisory Committee
Affordable Housing Subcommittee
December 15, 2002
10:30 – 1:00, State House Room 437
Meeting Summary**

Attending:

Rep. Peter Mills
Rep. Ted Koffman
Rep. Ed Suslovic
Beth Della Valle, SPO
John DeVecchio, SPO
Mary Ann Hayes, SPO
Alan Brigham, DECD
Peggy Schaffer, DECD
Peter Merrill, MSHA
Susan Johannesman, OPLA
Geoff Herman, MMA
Ginger Davis, Maine Association of Realtors

Proposed Agenda:

- Examine TIF or TIF-like tool; discuss specifics of how to do it, where to house it, who it is available to, etc.
- Revisit 2099; can it be put into an incentivized form, instead of mandatory
- Moving forward outside the legislative agenda: regional affordable housing workshop / forums – if there is time remaining

NOTE: This meeting was in discussion format. The summary that follows are not exact quotes and are not attributed.

Using TIFs as a Tool for Affordable Housing Developments

Comment: If you accept the premise that TIFs are predominately an economic development tool, in order for housing to be included in the TIF, it has to be an economic development piece: housing for economic development purposes rather than housing for social justice. So, if a municipality wants to include any housing in a TIF, they have to demonstrate that lack of housing is a barrier to economic development. There are parts of the state where that isn't the problem, where plenty of housing is available.

So, we could amend the TIF statute to allow housing as it relates to economic development. That could be done with a certification from the MSHA director that the area is in an unaffordable housing market – where median income is too low to meet the median house ownership or rental costs. For those communities where this does apply, the community will have to manage their 5% cap and allocate it according to their priorities to housing or commercial projects.

This proposal is not limited to affordable housing; there is either enough housing or not enough housing from an economic development point of view. This also reduces the need to monitor affordability over time.

Comment: I would assume the TIF, if we want taxpayers to contribute to it, ought to be focused toward workforce housing – not retirement housing or high-priced housing.

Comment: I like the simplicity of the first proposal. I was talking with Jim Brown at the last meeting. He was suggesting that for Presque Isle, the issue wasn't necessarily

the affordability of houses for sale, but the availability of rental units. What they are seeing developed is almost exclusively single-family detached housing. At a minimum, communities should have to make the case that the development they are recommending is appropriate in that town, to encourage economic development.

Comment: Who is the target group for this tool? Is it about housing generally, or is it affordable or workforce or...

Comment: I think you can make an argument either way. In an unaffordable market, any housing, any increase in supply is a positive for the market. On the other hand, the affordability is certainly an issue.

Comment: DECD has concerns about amending the existing statute, and would like the subcommittee to consider another proposal. The Department has serious concerns about opening up the existing TIF statute and going beyond the original legislative intent. We have drafted legislation to create a housing TIF, a separate program administered by MSHA. We support the concept of a housing TIF, but we support it as a housing-directed program, as opposed to a business development program. We are also concerned that limiting the availability of this tool to a community that could prove that housing is a barrier to economic development would eliminate most of the state from using it.

Should a worthwhile housing project have to compete with an industrial project? If it is important, it is important in its own right. Lots of things are important to economic development, for example, transportation, but they are not all included in our TIF program.

When discussing this matter with MSHA, one possibility we considered was to modify the existing statute. There is already an exemption in the statute for government buildings located in a growth area / downtown. If housing / affordable housing is an important component of a town's economic development plan, in a designated and approved downtown development district, we would consider a specific exemption for those type projects. The area and value limitations in the statute do not apply in designated downtown TIF districts. But, if it is going to be outside that district, we think both the purpose of housing, of fostering development of housing, is best served by a different program. A separate housing TIF program could work in partnership with existing TIF programs or independently, but it would remove the issue of the 5% cap, there would be easier administration, and all towns could use it.

Comment: How could a TIF be directed to increasing affordable housing? Targeting specific areas, e.g., downtowns, may be the right place to begin, starting with MSHA's work to identify markets that are underserved.

Comment: When one town uses a TIF district to shelter value, the cost of the burden is shifted to the rest of the state. So, there has to be a means test: if a town is going to use a TIF district to provide housing, they have to demonstrate that they need housing to move their economic development plans forward. If we are going to be asking others to shoulder the burden, it ought to be tied directly to economic development. The MSHA affordability index is a straight-forward, pre-existing resource to do that. The challenge becomes one of data collection and coming up with a formula. I don't see hundreds of Maine communities flocking in to do a TIF for housing. I don't know if we want to create a whole other system of

data collection and monitoring when we have a good one in place with MSHA's data, and when it will probably not be a huge program.

Comment: If we have limited resources, and limited takers, shouldn't we also target the most impacted area (e.g, the worker coming from five different counties to get to Jackson Labs because they cannot afford housing on MDI)? I personally think we should focus these TIFs on workforce housing.

Comment: I thought the problem we were trying to solve was affordable housing, specifically, and a TIF program would design two issues to do that:

1. remove disincentives from bringing affordable housing into a community (the sheltered benefit / value of TIFing); and
2. create a system to get resources to the developer of affordable housing, through the movement of tax dollars.

A TIF separate from the current commercial TIF tool avoids having to create and pass a qualification test would make it more doable. One more test to pass creates a natural bureaucratic resistance to the program, so I am leaning toward supporting DECD's proposal of a separate program. I don't think the market would develop affordable housing where it is not needed.

Comment: So long as we stick with the theme of affordable or workforce housing, if there is an income test, then you are probably right. The people in Millinocket are probably not going to put up TIFs to build affordable housing, but they might in Bar Harbor.

Comment: One thing that would be helpful in the existing TIF program would be to permit infrastructure development investments under the economic development TIFs to be used by workforce residential development. It would be nice to clarify in statute that an approach like that is OK.

Comment: Working with Traditional Neighborhood Developments and mixed-use communities, getting the flexibility in the TIF that it could be used for commercial or residential would be important.

Comment: How do we define workforce housing? If it's tied directly to a business development project, is it the workforce for that project? Or is housing affordable for the statewide median workforce? The Evan Richert scale - \$12 – \$20 / hour?

Comment: The DECD draft, defined "affordable" housing as affordable to a household earning 120% of median.

Comment: This is a matter of local control. As TIFs work, the municipal legislative body must approve them. If a developer comes into Bar Harbor and asks for a TIF to build seasonal retirement homes, your town council or selectmen are going to have to decide if that is in the best interest of the community, if it is worth allocating some of your 5% cap, etc. In Portland, one of the challenges may be a lack of high-end luxury apartments for business executives, so if a developer demonstrate a need and the city decides to apply their resources that way, it is their choice. I have no problem, as we do now, to require MSHA or DECD to sign-off on whether housing would indeed further economic development. I can't picture more than two handfuls of towns that would even seriously consider a TIF for housing. For simplicity, let's just put it out there. As soon as you enter into specific affordability guidelines, monitoring and compliance becomes huge. For a handful of towns, we ought to keep it as simple as possible. Let localities

decide. A separate program, a separate process, a separate district is a disincentive in itself.

Comment: One other strategy to think about is the general political reaction. It makes sense to target as much as possible. There is a growing restiveness between towns that use TIFs and those that don't, exacerbating political challenges to the TIF program in general. It would make political sense to target this to affect certain prescribed outcomes in the affordable housing market.

Comment: Municipal support would depend on how the money flows. A targeted program would be more acceptable than a loose one. If you are sheltering value of affordable housing, you're not going to create huge subsidy shifts. If a development that contained 25 or 30 percent affordable units, were able to TIF the entire development, including the non-residential areas, that creates more of a subsidy shift.

Comment: MSHA has been interested in an affordable housing TIF because the agency is interested in providing as many tools as possible to solve the affordable housing problem. The TIF is another option that seems it would work. MSHA has had the policy discussion with any number of people regarding the problem; in the end, the question may be what could get through the legislature more easily.

Comment: There are four things I am hearing I would be advocating for:

1. affordability – this is a burden that we are shifting on another part of the population, so there should be a public purpose. I would think affordability would be defined as up to 120% of median income.
2. I would advocate that it not exclude retirees – they are still going to be in competition for that same piece of the market. The supply met for them will relieve the pressure on the rest of the population. Many of the retirees are working at least part time anyway, and we are going to see that increasing.
3. In our attempts to get people out of their vehicles, we should be focused on mixed use when we can, mixed by type of housing and mixed by use (residential and commercial)
4. These projects should be located in targeted pieces of geography – service centers and designated growth areas.

Comment: From a "stop sprawl" perspective, TIFs are not included under the general rubric of the growth related capital investments act – you can TIF anywhere you want. There can be an existing saw mill outside the growth area that needs a TIF to expand / survive. So, I'm not advocating limiting TIFs to growth areas, entirely. But, for housing, it makes sense to focus that geographically. The downtown definition is a little too narrow; growth area is more appropriate.

Comment: With 170 TIF districts approved and 155 or so operational, DECD is seeing increasing attempts to find loopholes to use TIFs to pay for 'nice to have' investments or things the town was going to invest in anyway. Without having this clearly targeted, you open the door for proposals for municipalities that are not commercially developed (or want to be commercially developed) to shelter value and use the gain for amenities.

DECD has developed a proposal for a free standing TIF (subchapter 3 of chapter 206 of the development district statutes). *Walk through of proposal draft / HANDOUT.*

- This statute would have its own legislative finding that articulates the public purpose of housing, which is different than business or economic development.
- The definition of affordable housing can be modified; an emphasis on growth areas or service centers can be added.
- The structure of this proposal basically mirrors the business development TIF statute.
- Properties in downtown development districts do not need to worry about the 2% / 5% area limits in the existing TIF statute; you might consider adding that here.
- The committee may want to examine the criteria for determining residential districts, maybe add language about designated growth areas and consistency with comprehensive plans.
- The details of the program would have to be determined, or direct MSHA to create rules.
- If this were to include owner-occupied housing, transfer/sale of the property needs to be addressed.
- There is also a piece that reflects the existing TIF statute for other residents of the town that feel impacted by the proposed TIF. The local legislative body is directed to consider those impacts and has to include them in the application to the state.
- This draft would specifically disallow owner-occupied housing, so it would have to be modified if you want to include that.
- Recreational facilities are not in current TIF law, unless they are ancillary (like a swing set in a greenspace), so they are disallowed. In a housing district, you may want to change the language to include certain recreational facilities that are appropriate to the district's residential needs.

Residential TIFs address a unique policy area, and are a good opportunity to be examined clearly and separately.

Comment: How do you define affordable housing?

Comment: Is the answer to say that at least 30% of the project needs to be 120% of median or less.

Comment: The solution in LD 2099 was pretty good: 30% of the units had to be affordable to people with 120% the median income and of that 30%, 10% needed to be affordable to people earning 80% of median income or below.

Comment: If a developer comes in with a plan to leverage a project for tax purposes, and draws some lines around a small portion of the project in order to meet the criteria, I'm not comfortable with that.

Comment: There are two questions. What can you shelter and what can you invest those benefits in? If you just shelter the part of the development that is 30% affordable, can you use the resources to develop open space for the entire development / community?

Comment: It's important to distinguish between the captured value and the project costs. You don't care if you include some expensive homes in the district, if you don't send the money back to those expensive homes.

- Comment: I keep coming from a different direction. The easiest way for a housing TIF to work is for commercial apartments, and maybe a condo – a single owner or entity you can do a contract with. The neighborhoods envisioned in LD 2099 are entirely more difficult. If we can bite off a little piece and make it workable, maybe we can expand it later. Focus on what we know how to do, what is easy and simple.
- Comment: I have some real concerns about that. Part of the reason we're looking at this tool is that it is one incentive we can put in the place of a mandatory 2099. If we lose the replacement value for mixed use, for full communities, it loses its value.
- Comment: Developments with an affordable housing component regularly use covenants to maintain the affordability through income requirements and recapture components. Peter Merrill has copies of those covenants.
- Comment: We have to do something simple enough so that complexity doesn't kill it. There are enough disincentives under state policy to accept *any* housing, so even if we cast it as open as possible, I don't think we are going to be seeing huge demand for this. Also, it has to pass the local legislative body, so they are going to have to be satisfied with the justification. If we need to tighten this up down the road because so many communities in Maine are trying to TIF housing, that is a great thing. We can put a sunset on it so that we can either come back and tighten it up or get rid of it if it isn't working.
- Comment: From the municipal side, there is a lot of pressure to engage in TIFs from commercial and industrial investors. I don't think that's going to be the case with residential developers, so I don't see the need for the same type of restrictions. If the development proposal includes a certain component of affordable housing, and the rest is commercial, market housing, even high-scale housing, the legislative body has the task to overcome public concern regarding utilization of tax resources.
- Comment: I don't think this TIF bill would be as restrictive as the type of projects described in 2099.
- Comment: In a competitive market, I would like to see a Great American Neighborhood have some leg up with the TIF tools.
- Comment: There are a lot of details that can be worked out in Rules. Just capturing the affordable housing component is not enough, but if you allow capture of the whole thing, you need to ensure that it is not taken advantage of...
- Comment: I am supportive of some sort of recapture provisions, although I would like to see them be reasonably applied so individuals can build equity over time. In terms of the smart growth aspect, we want the sewer there so that towns can reduce minimum lot size, increase density, and favor a compact pattern of development. There are still some potential positives, even if the area fails to remain affordable. What we hear over and over is that we cannot become compact because we don't have the infrastructure.
- Comment: I think we are agreed to put this thing in. Do we create a separate TIF statute or modify the existing statute; do we give it to MSHA or DECD?
- Comment: MSHA has always said they would do the affordable housing part. What DECD offered is to teach us how to do the TIF, or handle the TIF, and we could take care of the affordable housing piece. If this goes to MSHA, I would hope to do it with existing resources, and with a lot of help from DECD.

Comment: I go back to let's keep this as simple as possible. If we are overrun with towns coming in and getting really creative, we can tie it down. But if lack of housing is hindering economic development, a municipality should be able to TIF a housing development or a mixed-use development with housing and commercial intertwined. If that has to be done with two districts instead of one, that would be a major disincentive.

Comment: MSHA has floated a draft for amending the existing statute; DECD has presented a draft for a separate statute. We could submit them both and kill one after Friday. I am hearing strong incentives for MSHA to run this.

Revisiting LD 2099: Livable, Affordable Neighborhoods

Comment: Is the focus of the incentives the Municipal Investment Trust Fund (MITF)? If you wanted to get into the MITF financing and other forms of grants or financial awards, then you would have to meet certain standards? As a matter of general principle, I think it is fair to say that these are state resources, and these are the ways you can qualify for them. The challenge is when moving resources to someplace takes them away from someplace else. However, obviously, there is going to be municipal resentment of further manipulation of the MITF.

Comment: As someone who has been writing the rules for the MITF, the rules are really multilayered. If you are going to be adding preferences, make them very specific.

Comment: I have three suggestions for incentivizing LD 2099:

- Use vague language as currently exists in the Growth Management Act regarding discretionary grant programs;
- Shelter valuation with respect to school funding formulas. Obviously, that does not come without some burden because it does shift money around.
- Reserve the first 1% of the municipal revenue sharing to support communities. Laurie Lachance said 1% of FY '03 project revenue sharing would be about \$1 million.

I am still concerned unless we have something that is truly an incentive, this will not be effective. We might also link back to the TIF proposal we are discussing, perhaps explicitly favoring a Great American Neighborhood model.

Comment: I have two ideas:

- Include not just the valuation, but the population part of the General Purpose Aid to Education (GPA) formula to lessen the burden on the host community;
- Create a new tax on the high-end homes. Redirect tax income into an affordable housing funds

Comment: How are these preferences going to help towns on the wrong side of the "Volvo Line"? There are lots of towns where affordable housing is not an issue. If you're linking preferences to things on this list, you can be hurt if you don't have an affordable housing problem. I would like to see some type of more meaningful incentive. The dollars we are talking about are just not that encouraging / influential.

Comment: I think this process would need a statewide board that will review proposals. Otherwise, with just a minimum standard, you can encourage a cookie cutter approach, which is exactly what people don't want. With a board, you can have some interaction on how the goals are met, location-specific conditions, etc.

- Comment: An argument has been made that it is the lot size that is the first order of problem. If municipalities had an incentive to reduce lot sizes in a growth area in areas on sewer and water, that could be the first step.
- Comment: I want to move this beyond lot size. If something comes in with the minimum lot size, but nothing else, that shouldn't get the benefits. There is a need to draw upon greater resources beside local planners.
- Comment: The question is where the reward will come from – and where it will go.
- Comment: Is it a reward to the developer or the municipality?
- Comment: If you want to set some revenue sharing and put it into the coastal community, if you want to move GPA out of the system into the coastal communities, it will not work. It has to be a little more interesting to the whole state. I think the grant programs are fair for that type of treatment, more so than GPA or revenue sharing.
- Comment: Unless you give the town money or make them do it, this bill is not going to make a difference locally.
- Comment: None of the incentives that we are talking about will make a difference. As David Tobin said, if you come to my town with this club, the town will tie it up for 3 or 4 years if they don't want it. The incentives need to be really powerful. The challenge is that if the zoning isn't already in place, why would any developer in their right mind put all of their money on the table and then go for contract zoning or a zoning change? Unless it has been changed in advance, it just isn't worth it. We have to be more complete in what we are looking for. Density alone is not enough.
- Comment: If it is an area served by sewer and the town's minimum lot size is 1 acre or higher, we have the patient sewer revolving loan fund to influence some funding. We also have MDOT Compact Urban areas, and are coming to terms with municipal cost sharing and local density / conditions.
- Comment: I think it would be easier to develop the environment in which these types of developments might occur, than to do it all at once. Sewer and water money, whether new construction or retrofit, is key. Loans are not attractive to towns, but if you can grant money, you can certainly leverage those grant funds to create local change in ordinances. I don't know how the planning board could fight a proposal once you have different regulations in place – smaller lot sizes, streamlined zoning...
- Comment: My experience in southern Maine is not that the municipality pays for the water and sewer, but the developer does it. That's why the patient loan has been useless because only municipalities are eligible.
- Comment: I don't know how to do this without generating money somewhere. There has to be a tax component.
- Comment: I'm not sure the creation of the board and that system is a necessary first step. It's the second step. If they approve project X, but it's not allowable or acceptable locally, what does that mean.

- Comment: The money that we don't have doesn't flow until a project is deemed acceptable by this board. Until we find money, there is no incentive. Towns can adopt local zoning changes any time they want.
- Comment: In addition to the legitimate issue of home rule, was another issue with LD 2099 that a project approved by the board could have a negative financial impact on the town?
- Comment: The concern was that very large proposals could be pre-certified and imposed on a municipality (e.g., 300-400 unit developments). Subdivision and site review would then have to be the way to slow that down, and sort out those impacts.
- Comment: The developer and the town should come to this board together and present a proposal to the board.
- Comment: That's what we did in Scarborough: the developer and the town went together to MDOT to address key traffic concerns. This wasn't new money; it was reallocating existing money.
- Comment: Traffic and schools seem to be what gets the community upset. If MDOT and Education could work with the board to reallocate existing resources...
- Comment: Those two plus water and sewer. Transportation is a shifting of resources, but with schools, you would be taking it from somebody. And, I don't see any money at all for sewers, outside of loans.
- Comment: With these things, we're generally going to be talking about impact fees, also.
- Comment: Towns can use impact fees regardless of this bill. What we're talking about is something new.
- Comment: Impact fees can only go for capital; they can't be used for operational costs that the municipalities are concerned about.
- Comment: But the impact fee can be used for new water and sewer, new schools. It can be used to address the concern the municipality has about long-term impact.
- Comment: But that's out there today, that's nothing new.
- Comment: What is the incentive for towns and developers to go to the board?
- Comment: We need a traditional neighborhood investment fund – and we need to put money in it.
- Comment: I wouldn't want state money going out just to change zoning. I want to see things being built.
- Comment: If a project is presented to the board and meets the criteria and the town approves it, we could have a formula to give money to the town to buy development rights over the next xx number of years.
- Comment: It makes sense to increase density in one area if you pair that with protecting land somewhere else in the community.
- Comment: That is one approach, but you may not want to limit it just to purchase of development rights funds.

- Comment: So Land for Maine's Future (LMF) could be one of the programs where a municipality gets preference – or maybe even guaranteed funding. It doesn't make sense that a town would want to increase density without protecting land somewhere else.
- Comment: Is that the whole sweetener? That's not going to be enough. Local purchase of development rights is difficult...
- Comment: I don't think you need to be too prescriptive about what types of benefits / incentives the town will provide or receive.
- There are a couple of approaches:
- develop a new bonding program similar to LMF; or
 - propose your own funding source, which means making somebody else pay. For example, you could redirect some MSHA money they get from the real estate transfer tax into a fund.
- Comment: You could target high value housing transactions (e.g, over \$200,000)
- Comment: There's about \$13 million paid into in the real estate transfer tax fund annually; MSHA gets about \$5 million.
- Comment: So, some of that money could be redirected into this fund, maybe \$1 million per year. MSHA will administer it. The bill will include a cap on what the incentive can be per unit of housing constructed. Put a sunset on the bill so that it would be up for review after four years and any money left could be returned to MSHA if it wasn't working. The neat thing about that money is that it is unrestricted by federal programs.
- Comment: It strikes me as a very positive way to move some of these projects along. Once people see they aren't so bad, it creates a ripple effect of acceptability. In 1991, the state took a chunk of the real estate transfer tax from MSHA, and gradually gave it back.
- Comment: This starts sharing the impacts; it doesn't lay it all on the shoulders of communities.
- Comment: You may want to include some report back to the legislature on the progress of the program.
- Comment: Is there any support for local option taxes?
- Comment: ECO-ECO has a component, but there is so much going on right now. MMA isn't pursuing something in particular.

Summary

Peter Mills will submit both the MSHA / Gary Wood and DECD bills for affordable housing TIFs.

Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will tie into the transfer tax distribution section. Beginning 10/03, \$100,000 a month from the transfer tax allocated to MSHA will be set aside in a separate fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would

be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07. Any uncommitted money would return to MSHA's standard funding.

Community Preservation Advisory Committee

January 14, 2003

11:00 am – 1:00 pm, State House Room 437

Meeting Summary

Attending:

Rep. Peter Mills (Chair)
Rep. Ted Koffman (Chair)
Rep. Janet McLaughlin
Ed Suslovic
Jeff Sosnaud
David Holt
Beth Della Valle
Mike Johnson

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes
Rep. David Tobin
Peter Judkins
Jim Brown

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, OPLA (committee staff)
Jenn Burns, Maine Audubon
Jodi Castallo, Maine NEMO
Elaine Clark, BGS
John DeVecchio, SPO
Linda Gifford, Maine Association of Realtors
Kirsten Hebert, MMA
Kathy Fuller, MDOT
Peter Merrill, MSHA
Mike Trobh, Modular Homebuilders Assoc.
Gary Williams, MDOT

Preparation of CPAC Annual Report

Committee Staff Liz Rettenmaier (SPO) and Susan Johannesman (OPLA) are preparing the CPAC Annual report. A proposed outline of the report was circulated at the meeting (and via email). Comments on the structure of the report (available online at <http://www.state.me.us/spo/cpip/cpac/meeting4.htm>) should be directed to Liz Rettenmaier (liz.retttenmaier@state.gov; 287-6417) as soon as possible. A draft of the report will be circulated and discussed at the next CPAC meeting, tentatively scheduled for February 3rd, 2003.

Clarification of CPAC Bill Proposals

Peter Mills submitted nine bills for the CPAC before cloture. The legislative members of the Committee will meet to discuss sponsorship and co-sponsorship of the bills (not all will continue under Peter's sponsorship).

1. Resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
 - MDOT is very concerned about moving forward on this bill without having an opportunity to provide the committee with additional information about the impacts of and alternatives to a constitutional amendment.
 - Rep. Mills expressed interest in maintaining the bill to start the conversation on the importance of alternative funding sources for public transportation.
 - Kathy Fuller (MDOT) asked for an opportunity to present additional information on the matter to the Committee before moving forward. Two germane studies have been completed in the last eight years, one by Dana Connors and one during John Melrose's tenure, which addressed funding alternatives and provide important information relevant to this topic. MDOT would also like to present the Committee with information on the funding process and the limitations on funding, the funding sources, and how MDOT has put their budget together. MDOT would prefer that the Committee did not move forward with this bill at this time. To give the committee a sense of the agency's commitment to non-highway projects, the agency requested \$78 million in General Fund Revenues in their budget; \$40 million is highway related, and another \$38 million is non-highway related.

- Rep. Mills reminded the Committee that legislators cannot submit legislation again until November 2004. One option is to leave this bill in the hopper for the time being, and revisit it in the spring. If the Committee meets again in February or March, the transportation issue should be on the agenda (20-30 minutes). Members decide at that point if it is appropriate to withdraw it. No committee would have acted on it by then anyway.
 - Jeff Sosnaud concurred. The Chair's point about losing this issue for two years does concern me; this may stimulate conversation on the subject. In terms of our meeting schedule, in my view, it needs to meet more than four times that are mandated, or we will be playing catch up continually. I would be willing to meet without the per diem and I imagine other members are as well.
 - Rep. Mills expressed the desire for a mid-session meeting.
 - Beth Della Valle asked Susan Johannesman about the Committee's ability to introduce legislation between biennia, and if that could be built into the Committee's report.
 - Even if included in the report, that doesn't give the Committee the authority to submit bills.
 - The members of the Legislative Council can approve it on a bill-by-bill basis. The two chambers would have to change the legislation to authorize the Committee to offer legislation.
 - The other option is if the delegated committee (depending on topic) is willing to report out legislation themselves.
 - If this committee got behind something next fall, it probably wouldn't be a problem.
 - We ought to include Committee priorities that have not had legislation introduced this session in the report so we can set the stage for future actions – regionalism, funding transportation, etc.
2. Bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
 - MDOT has no objections to this proposal.
 3. Bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
 - MDOT has no objections to this proposal.
 - 4&5. Bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
 - Rep. Mills submitted two bills to the Revisor's Office. The first expanded the existing TIF legislation to include residential development and kept the program in DECD, based on language drafted by Gary Wood and MSHA. The second created a new TIF program housed at MSHA, based on language drafted by DECD.
 - Another legislator submitted a third bill, which would house the program at DECD and was not limited to affordable housing, only limited to high cost areas.
 - Rep. Mills will withdraw "An Act to Amend the Tax Increment Financing Law to Include Affordable Housing." The Committee will move forward with "An Act to Establish a Municipal Affordable Housing Development District Program," which establishes the program under MSHA.
 6. Bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

- From the Affordable Housing Subcommittee Meeting on 12/15: Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will create a fund known as “Affordable Neighborhood Development Fund.” MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07.
- Rep. Mills recounted that the funding option for the incentives proposed in this bill was unacceptable to MSHA (who had left the meeting before the proposal was made). As an alternative, MSHA suggested using the expansion of the real estate transfer tax that captures corporate acquisitions / transfers. These funds currently are allocated to the General Fund. It is important to consider this bill, to work to make the language viable. Even if it doesn't pass this year, it will likely come back when the economy picks up again.
- Susan Johannesman will follow up with OFPR to determine if the corporate transfer tax has a steady revenue stream and an approximate funding level that would be appropriate for the “affordable neighborhood development fund.”
- David Holt enquired if there was an appeals process beyond the proposed committee.
 - Peter Merrill responded that if you wanted to draft an appeals process, it could be to the director (who would be on the panel to begin with), or the MSHA Board of Commissioners. The Commissioners are appointed by the governor, approved by a legislative committee, and confirmed by the senate.
 - Linda Gifford commented that there isn't an appeal process included in the language of LD 2099. If an application is denied, the board would have to provide the reason and the applicants could resubmit. But, this bill could certainly add an appeals process.
 - Peter Merrill expressed concern that the appeals process not open the gate for NIMBYs, etc. They need to keep that at the local level, where they have standing.
 - The Bureau of Purchasing has an appeals process that specifically applies to grants given by the state.
 - Peter Mills asked Susan Johannesman to verify there is an appeal available over this board, similar to existing MSHA and DECD boards.
- MMA does not have any comments on this proposal. Geoff Herman worked with the committee during the process. Since this process is voluntary and the town and developer work together, MMA has no objection.
- Beth Della Valle raised the concern that Land for Maine's Future (LMF) may not be the most appropriate source of funds for open space preservation; may want to get Conservation / Parks and Recreation program involved. LMF's focus is critical resources; there might be a better fit with some other state programs that create park and recreation activities.
- Mike Johnson pointed out that this proposal seems to focus on new development, and asked if there was a way to incorporate utilizing existing housing stock, or redeveloping existing structures.
 - There is a project being proposed in S. Windham, where there is an abandoned industrial structure a developer is interested in redeveloping, including developing some new residential units. That would fit into this model.
 - This bill was originally envisioned as building new neighborhoods of freestanding units, to build the “Great American Neighborhood.”
 - The first rule of community and economic development is to shore up what you have. SPO is very supportive of that effort. That was not originally envisioned here; maybe this is or isn't the place for that.

- Mike Johnson would like to see some incentive for that redevelopment over new construction.
- Beth agreed that both are needed, but that this bill would have to be changed significantly to address some renovation projects.
- Rep. Mills expressed that the goal is to create incentives for affordable housing, regardless of its location or age.
- Peter Merrill pointed out that the bill started as a vision for GANs; the genesis of the bill was SPO's desire to incent or override the 2-acre minimum lot size zoning for new development.
- Rep. Mills pointed out the statute says you can't insist on a certain lot size.
- Beth Della Valle replied that the standards in Section 5.a really apply to single-family houses.
- Peter Merrill pointed out if this is a really lucrative incentive, and includes rehab and everything we want to include in here, than every development is first going to want to stop by this program to see if they can pick up some cash, resulting in a very long line of people at the door.
- Beth Della Valle expressed concern that the benefits outlined in the bill would not be enough to generate interest and get these proposals built. Communities' primary concerns are not the one-time costs for capital construction; it's the ongoing expense of educating students. The Committee originally discussed forgiveness against the valuation; she would like to see the cash as well as sheltering from valuation.
- Peter Mills responded that the valuation impact is not going to be that great. Simply taking it off or reducing it from the school funding formula is a fairly small impact. You still have the kids and a fairly thin funding stream. Three or four years ago, this would have passed with money. It may again in the future.
- Peter Merrill noted that in a town where they are losing students, this type project might be very attractive with the extra incentives.
- Beth reiterated that there are lots of perceptions and biases related to affordable housing and dense housing – one being the number and cost of additional school children. If what we need to do is attack perceptions, to take away the 'penalty' of additional units, it will be a symbolic display. It will give people at the local level an opportunity to counterbalance that perception. If we don't have something like this, we may not find a willing town.
- Ed Suslovic noted that while the bill last session was not successful, it garnered a broad coalition of support. It tells me we were on the right track. It was geared only to those in unaffordable areas, where there is a shortage. This was not meant to fix a problem that doesn't exist. If it was the right thing to do, we should do it again.
- Ted Koffman reminded the committee they had discussed jointly sponsored workshops in some key regions, looking at the issues, and work on the education side.
- David Holt asked if the proposed housing TIF bill passed, could a development get both a TIF and these incentives?
 - Peter Mills replied that should be the case. Communities that "take a hit" under revenue sharing can apply for the TIF sheltering.
- Peter Mills proposed to keep the bill as drafted; focus schools on page one to "renovation, construction, and capital improvement."
- Beth Della Valle proposed adding streetscape improvements (street, sidewalks, trees, landscaping – language in the municipal investment trust fund is similar) to the list of benefits.
- Kirsten Hebert proposed adding public safety costs (police, fire service) to the list of benefits.
 - Ted Koffman noted that for most communities, the impact is likely to be reduced emergency service costs, since you don't have to go 12 miles out to respond to a call.
 - Peter Merrill concurred. The unstated issue here is the perception that affordable housing is for poor people, who require more police services. You don't hear people talking about that with suburban gated communities.

- Peter Mills noted that absent capital costs, those services could not be funded anyway.
 - Beth Della Valle wanted to know if this bill is limited to places with documented affordable housing needs like it was last year?
 - Ted Koffman wondered if the market would take care of that.
 - Peter Mills suggested MSHA account for that in the rule making
 - Peter Merrill asked what would happen if a town were extracting an impact fee from a developer **and** asked for this funding.
 - Peter Mills thought this would be in lieu of the impact fee.
 - Beth Della Valle responded that allowing this fund to pay the portion of the impact fee instead of the developer would make the impact fee system work better, because the developer of affordable housing would not be penalized.
 - Peter Mills noted that any funds awarded must be in lieu of an impact fee assessed to the developer. We don't want double dipping.
- 7. Bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
 - The committee had no comment on this bill. DECD not present to comment on the funding source proposed.
- 8. Bill mirroring the original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).
 - The committee had no comment on this bill.
- 9. Bill mirroring the original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.
 - The committee had no comment on this bill. Non-Legislative Actions Recommended by the CPAC:

Building Support For Bills Supported By The CPAC And Proposed By CPAC Legislative Members During This Session

This will largely be coordinated via email through Liz Rettenmaier.

The Committee will tentatively meet on February 3rd, 2003, 10:00 – 2:00. Proposed agenda items include:

- Transportation constitutional amendment – Presentation by MDOT
- Final look at all the bills
- Discussing Co-sponsors and Committee assignments for the bills
- Review draft annual report (draft will be circulated via email prior to the meeting)
- Review other legislative titles related to CPAC charge proposed by other legislators (possibly invite sponsors to present – briefly – to the Committee). Consider presenting the CPAC's opinion to appropriate committees.
- Identify future priorities, projects, research

**Bills Proposed by CPAC Legislative Members to the 121st Legislature
(Submitted by Rep. Peter Mills to the Revisor of Statutes)**

1. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
2. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
3. Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
4. Create a bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
 - a. Two bills were submitted to the Revisor's Office. The first expanded the existing TIF legislation to include residential development and kept the program in DECD, based on language drafted by Gary Wood and MSHA. <NOTE: This bill title was later dropped.> The second created a new TIF program housed at MSHA, based on language drafted by DECD.
5. Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.
 - a. From the Affordable Housing Subcommittee Meeting on 12/15: Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will tie into the transfer tax distribution section <MSHA strongly objected to this funding source>. Beginning 10/03, \$100,000 a month from the transfer tax allocated to MSHA will be set aside in a separate fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07. Any uncommitted money would return to MSHA's standard funding.
6. Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
7. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).

8. Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

Non-Legislative Actions Recommended by the CPAC

1. Insert incentives / points for regional cooperation in Transit Bonus rules. MDOT is reviewing the rules, which have not been finalized, to see if modification is possible in the short term.
2. Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, *or* create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)
3. Work on outreach and communication on affordable housing agenda (TIFs and incentivized “Livable, Affordable Housing” bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).
4. Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Community Preservation Advisory Committee

February 3, 2003

10:00 am – 2:00 pm, State House Room 126

Working Group Meeting Summary

Attending:

Rep. Ted Koffman (Chair)
Rep. Peter Mills (Chair)
Rep. Janet McLaughlin
Rep. Ed Suslovic
Rep. David Tobin
David Holt
Jeff Sosnaud
Beth Della Valle
Mike Johnson

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes
Peter Judkins
Jim Brown

Department of Transportation Presentation re: Constitutional Amendment Proposal

Kathy Fuller and Bruce Van Note of the Maine Department of Transportation presented information to the Committee on highway funding and funding options for transit that MDOT has investigated in the past.

The Highway Fund has been unstable and has not kept up with inflation. The General Fund and General Fund bonding have made up the difference.

Last session, the motor fuel tax indexing law was passed. It will help MDOT by adding ½ cent tax on an annual basis, but it is not expected to help the Agency meet its bottom line, completely.

The highway fund continues to be such a challenge in part because of aging infrastructure. The state has a significant number of assets that have to be maintained. We rank pretty high among other states for the number of miles per capita – over 8,300 miles of road, over 2000 of which are substandard (based on modern day standards). These are generally rural roads; they create an economic link between natural resources and the markets. The estimated cost is around \$1.3 billion to upgrade those in the next 10-20 years.

In addition, our bridge infrastructure is slowly losing ground. We've been spending \$95 million per biennium over the last six years to ensure our bridge infrastructure remains safe. We're looking at increasing that to \$108 million / biennium to just keep up. A number of bridges were built around The Depression, 50-75 years ago, which is about the useful life of a bridge.

When the state Sensible Transportation Policy Act passed in 1991, it required MDOT to invest in all modes of transportation, but it did not provide additional funding to do that. MDOT relied a lot on the general fund, particularly general fund bonds, to meet the non-highway expenditures (rail, transit, etc.).

All of the department's maintenance and operation needs are entirely reliant on the Highway Fund. A couple of exceptions are interstate maintenance funding, which gets some federal funding, and the congestion mitigation air quality program, which allows us to use federal dollars for operational purposes for a short period of time (e.g., the Island Explorer) for start-up costs.

MDOT does get a significant amt of federal dollars, but that has proven to be inadequate, and is based on a minimum guarantee formula. The federal dollars represent a fairly sizable amount, but don't meet the need. Congress sets the ceiling on how much the Administration can distribute in a six-year period, but the Administration doesn't need to distribute the whole amount. With all the talk of war, other needs, and the federal deficit, we are facing, potentially, a negative impact on what we can expect from the federal government.

In addition, MDOT will likely be asked to repay a previous surplus deposit into the Highway Fund from the General Fund, due to the current General Fund situation.

A handout to the committee included:

- Types of funding that were included in the last biennial program (Table 1);

The current MDOT budget is still under development; we're unsure what the totals are going to be because of the volatility at the federal level.

The Department is preparing a list of extraordinary needs right now to submit to our congressional delegation over the next six years as TEA3 is being created. We don't expect we'll get \$664 million – hoping \$20 million a year for the next six years. Most of these projects rely on a match from the Highway Fund, but a number of them (non-highway/multimodal systems) will require a match from other sources – probably general fund bonding. If we're successful in receiving \$142 million in multimodal earmarks, 80% would be federal dollars over 6 years.

- Pages 4-5 are simple summaries of a 1993 and 2002 report that identified some options for funding non-highway and highway-related investments in our transportation system.

Discussion

Van Note: The question we have is if time is right for a new program. We don't have enough money to do what our current mission is. These are hard numbers out of our Planning Department; the "unbuilt" roads have not been touched since WW2.

Mills: The bill in the hopper would add "the cost of public transportation" to the constitution.

Koffman: My assumption was we were trying to set the stage for when revenues were flowing more copiously that we could see some funds, not that we would try to leverage transit over your priorities today – so that we could look at all of those needs when we have the funds to do so.

Van Note: My concern is one of timing. We're in a General Fund budget crisis situation. The Governor's Office understands that everybody needs to take a hit, he closed the '03 deficit with \$7.2 million of Highway Fund dollars – and we expect another \$8.1 in the next budget.

Koffman: How would this proposal change anything?

Van Note: Once it's allowed in the Highway Fund, the Legislature will be less willing to fund transit projects out of the General Fund during time of crisis. If the constitution allows broader use of Highway Funds, legislators won't use General Fund dollars for these projects.

Mills: Are transit systems state tax exempt?

Van Note: There is also a concern that other folks would step tot the table to get their pieces in – Rep. Faircloth's LD 108 opens up highway funding for "such costs as the legislature considers appropriate" including mass transit, trails, ...

Koffman: Is there a way to do this without putting a hole in the dike?

Van Note: This legislature and your constituents have set long-standing priorities – the roads. They see the direct connection between the gas tax and the road improvements. Highway and bridge funding is very highly supported, across the state – it's an economic development issue. That connection isn't as strong for non-highway purposes.

- Koffman: I didn't realize there is a lockbox here. In a sense, public transit is a stepchild.
- Van Note: We've been funding it through General Fund in the past.
- David Holt: I get paid by people who would agree with you. However, I am concerned that we'll never address public transportation with that idea. Is there any opportunity so that the beneficiaries could pay a higher tax to fund what we're proposing, since in the long run it would probably result in savings to the Highway Fund because of reduced wear?
- Van Note: That would be a significant administrative burden. This committee also expressed interest in rural transit options. It would be very hard to have this as a "user pays" approach.
- Fuller: Passenger transportation was \$110 million out of \$613 million last year; not quite a stepchild. Of that, \$24m was for transit; the majority of it was from Federal Transit Administration (80%) – MDOT primarily provided the required state match.
- Tobin: Can we look at this politically? We just passed an indexing bill last year, which some of us took a pretty heavy hit. That indexing bill comes back every year – and it only won by 1 vote last year. I can sell the indexing if it's going to roads and bridges, but not if it's going to busses. This is going to be perceived as a bill for the metropolitan part of the state, and it will be the rural caucus vs. the rest of the state. I think, politically, that answer is clear.
- Mills: Is it fair to say that the rural portions of the state receive a larger portion of the benefit of the highway fund, or is that unfair?
- Fuller: We looked at the total pie and looked at "urban" and "rural" towns based on the federal definition. 33% of the investment went toward urban communities; 67% was going outside of those urban areas – which does include towns like Hallowell, Manchester – which have centers and downtowns, but aren't considered urban by the feds.
- Mills: Would you say that more than 1/3 of the dollars has been collected from urban users.
- Van Note: We haven't looked at it that way. We look at seven divisions statewide and the percentage of substandard arterials and allocate the funding that way. The arterials, by definition, have the highest amount of traffic – arterials carry 62% of the load. Theoretically when we get done, all the substandard roads across the state are rebuilt at the same time – in the next 8-10 years (\$2 million/mile – down from approximately \$2.5 million at the beginning of the project). The collector system will be more like 30-40 years to be rebuilt (\$0.5 million/mile based on statewide standards). Any money not going to that job is going to make it take longer; the funds are not increasing... The federal level is looking worse – about \$30 million less than last year.
- Koffman: I don't know if we need to continue too much longer. Rep Tobin's wisdom will carry the day for me. My perception of this group is community preservation, enhancing downtowns, and encouraging folks to enjoy a higher quality of life by living closer to downtowns, with transit options being part of that formula. I think the state needs to come to terms with its investments in transportation infrastructure; we're a poor state putting a lot of funding into a lot of miles of roads.
- Fuller: We'll be happy to come back to talk about Access Management some more and our evolving Urban and Village policies.
- Sosnaud: How do we go about changing our reliance on the traditional methods of transportation? We finished a record era of prosperity that would have been the opportunity to make

those decisions – and we didn't. Another school of thought says you make those changes in times of crisis. When do you do it? I lived in Bangor for 12 years, and I know that bus system can be more effective; we're not only talking about the largest metropolitan areas.

Fuller: What you're really talking about is behavior modification. People tell us they want all the choices they can get their hands on – they're not saying one choice is preferred over another. What we're trying to do is provide the choices and hope that people choose the right thing. The ways other countries have done it is to increase the fuel tax significantly, but I don't think this country – or Maine – is ready to go there. We're trying to make the choices available with a limited number of resources.

Koffman: Thought on schools. In 1975, spending \$9m on busses; when The Cost of Sprawl was complete, it was about \$58m; now up to \$62m – is that all state funding?

Van Note: It's a combination of general fund and local resources.

Mills: The percentage of state funding is dreadfully high. One of the reasons we have great busses in rural districts is that the state subsidizes that based on some past education funding decisions that incorporated income into the school funding criteria.

Tobin: One of the drivers on that was regionalism. We had 1 school bus with 8 schools; we consolidated and needed to bus a lot more kids because they couldn't walk to school any longer.

Koffman: When we didn't allow schools to upgrade / maintain their existing local elementary and middle schools, they got built further out – where kids would have to take a bus to get there.

Mills: I think it would be a highly suitable amendment, but I get the sense that the committee is wavering.

Beth: This is one of those areas where we are going to be tripping over ourselves until we figure out how to do it right. I would like to suggest that we move this off the short-term agenda to the mid-term and work with MDOT to establish additional information so that we can continue to gather information and get advice. I don't think we can lay out the detail on that agenda, but I would like to encourage that we try to formulate the questions that we have and work with MDOT to get their input back on this during the coming season so when we get to the end of the spring, we can have some sense of what we are going to try and tackle, who is going to do what, etc.

Sosnaud: I am sympathetic to that. I would like to ask the legislators if there is something to be gained by going forward at this point?

Mills: It might get killed 13-0 in the transportation committee... You need 2/3 to get it out and even discussed on the floor.

Koffman: Transportation is in an orbit that was shaped 40 years ago; changing it will be a struggle. This caucus has not been involved in that to this point; maybe we need to continue the transportation / smart growth / community preservation dialogue.

Van Note: I would agree. The debate that you're creating is having an effect on this education component. I moved from the country into town so my kids could walk to school, we could walk to the market, etc. I think you win 1 person at a time.

Sosnaud: It's beyond our ability to advance legislation as an advisory committee. It's not beyond our ability to education, to set something in motion that would help promote this dialogue so that it starts somewhere.

Mills: I have lived in Maine for most of my life; I have never seen an era when the roads are deemed to be "good enough." Mainers will never say that the highway budget is sufficient. I think this ought to be on the long-range agenda. I don't think there will ever be a political climate when this will be popular. The only way to expand it would be 55,000 signatures and a referendum.

Suslovic: 3/25/43 legislative record. There were some good arguments as to why it wasn't a good idea to put the gas tax the constitution. When we talk to people who want to solve the traffic problem, it is usually more lanes, more lights – it is really because people want to get from A – B without being slowed down. One way to reduce that, besides building capacity, is to reduce trips, reduce amount of time on the road. The Healthy Communities groups get excited and see the need for a Transportation Policy rather than a Highway Policy. We're not going to win on every one of our bills, but I don't think that's a reason to pull back.

Tobin: It is going to take education before everything else. If you increase the gas tax enough – which you can only do when the public is ready – and allow it to go into transit, when that the gas tax gets high enough and the transit systems are funded enough, folks will change their behavior.

Suslovic: There are parts of the state that transit will be an alternative for people; is a differential gas tax an option? I can hear the legitimate complaint from rural Maine that is not going to see transit options for years and years.

Holt: Can it be local option?

Tobin: Why can't we benefit rural communities – run express buses between communities.

Fuller: A differential may cause an unintended consequence.

Koffman: I was thinking the opposite – lower the gas tax in service centers (similar to Gov Dean's lowering the sales tax in downtowns).

Holt: If you make it local option at a penny a gallon, nobody would even notice.

Della Valle: The conversation we're having is why I'm advocating we move a little more slowly. We've created so many unintended consequences in our legislative proposals; we don't generally slow down to think about what happens in the next layer. If MDOT is on board, they know the system, they know the smart growth principles. We can think through the consequences, we may be able to avoid creating more messes than we clean up.

Mills: Consensus is to withdraw the bill, keep it alive on the long-range agenda, but not press it in this legislature.

Della Valle: I would like to press the committee to articulate that research agenda so that as we get through this calendar year, approaching summer, that we can have some sense of what we will be addressing in the late summer.

Sosnaud: Long-term agenda doesn't mean we put it away for the long term, but that we continue to work on it...

Mills: I would like further information on the exemption from the gas tax, which is an interesting form of subsidy for schools and municipalities.

CPAC Annual Report

A draft of the Annual Report is posted on the CPAC website, with comments requested by February 10, 2003 (<http://www.maine.gov/spo/cpip/cpac/meeting5.htm>). Comments or suggestions should be submitted to Liz Rettenmaier (liz.retttenmaier@maine.gov).

Members suggested that the transportation amendment be moved to the long-term, and that education of transportation alternatives be included as a component of the discussion. Also, SPO and MDOT should work together to develop a paragraph about transportation policy and community preservation for mid- and long-term goals, including service roads strategy for addressing sprawl on arterials, similar to Vermont's strategy.

Beth Della Valle recommend including the Committee's concern that the LMF tool be very closely tied to the smart growth efforts, in term of preserving farmland and unique resources, with recognition that the preservation should not pull resources out of the development stream.

David Holt suggested adding a sentence that rehabilitation of existing buildings serves the interest of the Committee, and that the Committee support programs and policies that make it easier to rehab existing buildings and facilities (including schools).

Current Bills

An Act to Establish a Municipal Affordable Housing Development District Tax Increment Financing Program (LR 787, Koffman)

Merrill: The Tax Increment Financing for affordable housing bill language is coming together; Susan Johannesman is working with me to draft it.

Tobin: Will this bill piggy back on the existing TIF program? I'm concerned that a TIF can actually cost a municipality, if the money isn't spent wisely. The Town of Windham has 2 TIFs in place, and they each cost the town about \$100,000/year. When you set up a TIF, you design the zone, take the increased tax revenue, and shield it from the state, and put it in a fund. It goes into a fund that has to be spent as your fiscal plan denotes. For instance, most TIFs take 80% of the area and shelter it; those dollars do not go into the town's general fund. If you're smart, when you set it up, you include infrastructure associated with the improvements in your plan. If you exclude the TIF fund you're penalizing your general fund. It would be nice if this bill could be used by the municipality to finance school infrastructure that the development creates.

Suslovic: I have a bill in at request of the City of Portland that would open up the existing TIF language to housing. Portland and many service center communities have excess capacity. If Portland or South Portland were to TIF a housing project, they would be trying to get as many school children as possible to live there – increasing enrollment without increasing valuation. The incentives for this bill are coming from developers who say that the cost of living is too high for employees.

Tobin: The first ring of towns is also becoming prohibitively expensive. If something doesn't happen, the second ring of towns is next.

Holt: I would be interested in speaking on behalf of the TIF bill.

An Act to Provide Incentives for Affordable Neighborhood Developments (LR 789, P Mills)

Mills: I'm not sure where that is, but I think the funding is straightened out. We're looking at real estate transfer revenues; have yet to find out if we have produced any revenue from that since July 1. (Peter will follow up with Susan to ask OFPR.)

An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda (LR 792/LD 389, Suslovic)

Suslovic: I think LR 708 and LR 792 are identical, LR 708 is being withdrawn.

An Act to Enhance the Duties of the Community Preservation Advisory Committee (LR 706 / LD 522, Suslovic)

Suslovic: LR 706 adds two charges to the CPAC (sort of similar to Barstow's bill) that addresses looking at counties, labor markets.

Tobin: I think Ed's going the right direction. This may lay some of the groundwork for it in the future.

Suslovic: This bills says that regionalism is important to this committee and that county boundaries are an impediment to that

Della Valle: This group has a legitimate place at the table, but this issue can consume a lot of energy. The State Planning Office worked for over two years on the Proposal to Reduce the Cost of Government through Reform of Governmental Relations (available on the SPO website).

Suslovic: At least half of the State and Local Committee is ready to address this issue.

Resolve, Directing the Department of Education to Use Money for School Transportation Costs for Payment of School Crossing Guards (LR 407 / LD 624, Suslovic)

Suslovic: This proposal requires DOE to include crossing guards in the same formula for reimbursement as school busses

An Act to Protect Motor Vehicles From Dangerous Pedestrians (LR 295 / LD 63, O'Neil)

Suslovic: I would oppose this bill because it sends the wrong message, but we need better enforcement at cross walks.

An Act to Create Broadband Internet Access in Rural Areas of the State (LD 90, Goodwin)

Della Valle: This is a bill that makes me ask "who is going to pay for this" – if the cost is on the backs of the communities with a more compact settlement pattern, extending another utility into a low density area, I would be concerned.

An Act to Establish Rent Caps on Property in Southern Maine (LD 42, Laverriere-Boucher)

Suslovic: The focus has changed from rent caps to removing barriers to construction of affordable housing (not rent caps). I'm planning on going tomorrow to support this

Four bills affecting the Land for Maine's Future Program: An Act To Require the State To Hold Title to All Land and Easements Purchased with the Land for Maine's Future Fund (LD 176, Carr), An Act To Limit the Use of State Funds To Purchase Land or Conservation Easements (LD 94, Joy), An Act to Require

Joint Standing Committee Approval for Certain Purchases Proposed by the Land for Maine's Future Board (LD 92, Sherman), and An Act to Limit State Land Ownership (LD 348, Shorey)

- Suslovic: I'm having a harder time drawing a link to this committee.
- Koffman: The current LMF program statement stipulates 20% to support agriculture in fast growing areas and another percent to support open space near fast growing areas, shifts that were brought about by the smart growth movement. From everything I've heard, the real threat to prime agricultural soils is in Southern Maine. I think we should oppose this.
- Tobin: We just took advantage of that program in Windham, right beside our growth area. You'll find that people in Northern and Eastern Maine have a completely different outlook.
- Audubon: We feel very strongly about maintaining the integrity of LMF program; I would encourage the committee to look carefully at LD 92 and 94. 176 would require the state to hold the entire title; this would reduce the partnerships between the local land trusts and municipalities.
- Suslovic: One concern I have with LMF in southern and coastal Maine is that it is another tool for NIMBYs to set aside land that is appropriate for development. How do we ensure that LMF doesn't support the NIMBY movement, factoring smart growth principles into their decision?
- Tobin: The LMF Board is very careful to address that very issue.
- Della Valle: Last summer, we met with Tim Glidden and Evan Richert (former Director) on this to make sure that LMF is doing its part on the livability aspect and fine-tuning how they address this NIMBY issue. There was a strong focus on this issue in the last round of applications. A number of submitted projects were rejected for that very reason. LMF is now talking about not just preserving the "relic farms" but creating a system, not just the isolated parcels.
- Suslovic: My experience with the Presumpscot River parcel makes me worry that there isn't a strong smart growth voice on the LMF board to replace Evan.
- Della Valle: In the report, I recommend raising the issue of direction to the Governor / Administration that we remain concerned that the LMF tool be very closely tied to the smart growth efforts, in term of preserving farmland and unique resources, but concern that it doesn't pull resources out of the development stream.
- John Piotti: I wanted to confirm what Beth says – looking at critical systems for farmland is important. In terms of farmland (remember LMF doesn't purchase the farm, it purchases the development rights), the point is moot in Northern and Eastern Maine – there are no deals in Eastern or Northern Maine where it is worth purchasing the development rights on agriculture land there.

An Act to Streamline Maine's Planning Process (LD 308, Glynn)

- Della Valle: This bill calls for elimination of SPO and redistribution of its programs. I would suggest that SPO would have some serious concerns about these bills. One of the functions of SPO in statute is as a coordinating function among various state agencies, staying above the "nose to the ground" program approach; that would be lost if broken up and redistributed. What has been amazing to watch over the last 8 years is watching the silos come down, even at SPO. In a program, you focus on the day-to-day requirements of that program. There was a time, when we pulled all the programs out of SPO and SPO was just a policy shop; both the policies and the programs suffered from that approach. Bringing these two pieces back together was remarkable.

NEXT STEPS

- Koffman: Is there a need for another meeting during this session?
- Suslovic: One of the things we need to keep in mind is that we are not a task force that will go away after a year. We, as a committee, need to keep pushing some of these in the short

term, and consider some of these in the longer term. I think there is a need to continue to meet this session to stay informed about what is bubbling up. I would like to identify 6, 8, 10 bills that we should be officially supporting or opposing.

- Mills: A productive format was like this morning focusing on transportation policy. If you wanted to have focused time on various issues, we can do that – school construction (conversion of regional vocational areas into school districts), dairy farms, regional government.
- Della Valle: And the LMF issue
- Suslovic: Evan is creating a whole plan around regionalism; it would be nice to hear where he is coming from.
- Mills: This issue will be part of the Governor's "State of the State" address; it's part of MMA's proposal, 2% for regionalization.
- Johnson: When we're talking about regionalization of schools, are we talking about a single campus?
- Mills: Generally, we're talking about consolidating administration; consolidating schools are local (very contentious) decision.
- Tobin: There is a bill in there to make Aroostook a single school district (An Act Concerning Restructuring of School Districts, LD 230, Martin). I don't see why that wouldn't work.
- Suslovic: An Act to Increase Revenue Sharing to a Municipality by 5% of its Allocation if it Shares Fire, Police and Recreation Services with Adjoining Municipalities (LD 141, Martin) is also an interesting one.
- Mills: Why don't we schedule a meeting to look at regionalism issues, inform ourselves about it – pull out bills that are focused on this, get copies available to the committee, prepare an agenda for a meeting that concerns itself with regionalization as a theme. Enlist Jim Rier to come down from Calais to address the committee on his plans. Might ask John Martin to attend for his views. Jim Brown to give us an Aroostook county perspective. Evan Richert to have his thoughts together. Beth can give her dog and pony show on counties. (30-40 minutes each). Invite the State and Local and Natural Resources Committees. March 21, starting 10 AM.
- Koffman: We will also want to touch on affordable housing, transportation later – maybe 30 minutes each on how each of those connect to regionalism discussion, an integrated approach.
- Suslovic: PACTS has been struggling with doing regional transportation planning when you don't have control over local land use – maybe get them in for 15-20 minutes.
- Della Valle: Both Kathy Fuller and I have been working with the PACTS committee for the last few months. The planning committee unanimously recommended that the policy committee amend its 20-year transportation/land use plan to design a system that would link transportation investments in arterial corridors to the municipalities making commitments to certain types of land use regulation. It was acknowledged that this was a very tricky issue that needed some refinement. The policy committee, made up of town managers and selectpersons, got nervous about the unanswered questions and responded that they wanted the committee to keep working on it and bumped it down in the priority list.

Mills: MMA is another player. Doug Brooks, who is now on the House Speaker's staff, has written some of the best stuff on it. The five towns north of Portland initiative is another potential area of interest.

Holt: I think it's a mistake to say that local governments don't favor regionalism. There are some good examples out there. Some of the successes can give people courage.

Della Valle: I think MMA has also put together something on the successes.

McLaughlin: Evan would be good thinking about regionalism in New England. Successes come when you tailor the players to the situation; county government is too big for some things, but too small for others.

Mills: There is also the COG system.

Suslovic: Without providing some mechanism for towns to link comprehensive plans together, we're never going to get out of our own way.

Della Valle: We got legislative changes last year to put multi-town plans on equal footing; the next step is getting some incentives to actually create and implement them.

Koffman: Some time ago, when we were talking about affordable housing outreach, workforce housing, rental and ownership... Have you thought about that, perhaps targeting some specific geographic areas? Should we be sponsoring something in a collaborative way to look at how we can change our ordinances, change our laws.

Merrill: We met with a rep of a group in Southern Maine in the last couple of weeks that wants to do exactly that. My inclination would be to work with them, help them organize to do it. Based on that success, replicate in parts of the state that organization doesn't serve.

Koffman: It may be that you or DECD might know of communities that are ripe for such a thing...

Suslovic: Along those lines, we have three excellent videos, this community could help by getting out. The MSHA 20 minute video on housing; Save our Lands, Save our Towns, the Livable Landscapes documentary specific to ME, NH, and VT. It would be great to get those in front of the rural caucus and build some bridges.

Della Valle: We have all those available if the legislators want to arrange showings, we can provide the videos.